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SAN FRANCISCO PORT COMMISSION

Doreen Woo Ho, President
Kimberly Brandon, Vice President
Willie Adams, Commissioner
Leslie Katz, Commissioner
Mel Murphy, Commissioner

Monique Moyer, Executive Director
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Amy Quesada, Commission Secretary
Phone: 415-274-0406; Fax 415-274-0412

AGENDA TUESDAY, AUGUST 13, 2013 2:00 CLOSED SESSION 3:15 P.M. OPEN SESSION

PORT COMMISSION HEARING ROOM, SECOND FLOOR FERRY BUILDING, SAN FRANCISCO CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Port Commission are posted on the Port's Website at www.sfport.com. The agenda packet is also available at the Pier 1 Reception Desk. If any materials related to an item on this agenda have been distributed to the Port Commission after distribution of the agenda packet, those materials are available for public inspection at the Port Commission Secretary's Office located at Pier 1 during normal office hours.

1. CALL TO ORDER / ROLL CALL
2. APPROVAL OF MINUTES – July 9, 2013
3. PUBLIC COMMENT ON EXECUTIVE SESSION
4. EXECUTIVE SESSION

A. Vote on whether to hold closed session.

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Sections (a) and (d) of California Government Code Section 54956.9 and San Francisco Administrative Code section 67.10(d)(1)

City and County of San Francisco vs. Distillery No. 209 LTD. Napa, California (San Francisco Superior Court Case No. CGC-11-515550; filed October 31, 2011)

GOVERNMENT
DOCUMENTS DEPT

AUG - 9 2013

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Discussion and approval of settlement of litigation filed by the Port as proposed in the negotiated Settlement Agreement with Distillery No. 209 Ltd. Napa, California, an Oregon corporation (Defendant) that: (i) provides that Port and Defendant will negotiate in good faith to enter into a new lease for the space that Defendant currently leases for its distilling business on a holdover basis in Pier 50 Shed B on the following basic lease terms: (A) term: two year lease with three one-year extensions at Defendant's option; (B) rent: \$1.25 per square foot for the first two years with a 3% annual increase for any extension period(s); and (C) use: same as current use; (ii) requires Defendant to pay the Port \$70,000 plus 3% simple interest in monthly installments over the term of the new lease with complete payment to be made no later than the expiration date of the new lease; (iii) contains mutual releases; (iv) requires the Port to dismiss its lawsuit; and (v) includes other terms as set forth in the Settlement Agreement on file with the Port Commission Secretary.

(2) CONFERENCE WITH LEGAL COUNSEL AND REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8. *This session is closed to any non-City/Port representative:

- a. Property: Pier 38, located at Delancey Street and The Embarcadero
Person Negotiating: Port: Byron Rhett, Deputy Director, Planning and Development
*Negotiating Parties: San Francisco Waterfront Partners III, LLC: Simon W.R. Snellgrove
*Negotiating Parties: TMG Pier 38 Partners, LLC, a joint venture of TMG Partners and Premier Structures: Michael Covarrubias

Under Negotiations: ___ Price ___ Terms of Payment ☒ Both
The Port recently received responses to a request for proposals for the lease and rehabilitation of the Pier 38 bulkhead building, located at Delancey Street and The Embarcadero. In this executive session, the Port intends to seek direction from the Port Commission on the appropriate price and terms of payment for this property. The Port intends to discuss factors affecting the price and terms of payment of the bulkhead building and the Port's goals and objectives under the Pier 38 Request for Proposals, but only with respect to the impact of those factors on price and terms of payment. The executive session discussions will enhance the capacity of the Port Commission during its public deliberations and actions to set the price and payment terms that are most likely to maximize the benefit of the Port, the City and the People of the State of California and to more effectively negotiate with the selected proposer on price and payment terms.

- b. Property: Seawall Lot 322-1, an approximately 37,810 square foot rectangular land parcel bounded by Broadway, Front and Vallejo Streets;

Assessor's Block 0140, Lot 7, located at the corner of Front and Broadway Streets.

Person Negotiating: Port: Byron Rhett, Deputy Director, Planning and Development; Jonathan Stern, Assistant Deputy Director, Planning and Development; and Ricky Tijani, Development Project Manager, Planning and Development

*Negotiating Parties: MOH: Mayor's Office of Housing: Teresa Yanga, Director of Housing Development; Anne Romero, Project Manager

Under Negotiations: Price Terms of Payment X Both
The Port and the Mayor's Office of Housing ("MOH") are contemplating entering into a memorandum of understanding ("MOU") covering the terms and conditions under which the Port will (1) lease Seawall Lot 322-1 to MOH or its designee at a below-market rent for affordable housing development pursuant to Senate Bill 815 and Assembly Bill 2649 (subject to State Lands Commission approval of lease terms), and (2) receive credits under the Job-Housing Linkage Program ("JHLP") equal to the difference between the fair market rental value of the lease and rent under the MOU as authorized under Ordinance No. 232-12.

In this executive session, the Port's negotiators seek direction from the Port Commission regarding the price and terms of payment, including the Port's right to and amount of JHLP credits to be applied against JHLP obligations arising from future market-rate housing development on other non-trust Port lands. The executive session discussion will enhance the capacity of the Port Commission during its public deliberations and actions to set the appropriate price and payment terms that are most likely to maximize the benefits to the Port, the City, and the People of the State of California.

5. RECONVENE IN OPEN SESSION

- A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67-12.
- B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

6. PLEDGE OF ALLEGIANCE

7. ANNOUNCEMENTS

- A. Announcement of Prohibition of Sound Producing Electronic Devices during the Meeting: Please be advised that the ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room

of any person(s) responsible for the ringing of or use of a cell phone, pager, or other similar sound-producing electronic device.

- B. Announcement of Time Allotment for Public Comments: Please be advised that a member of the public has up to three minutes to make pertinent public comments on each agenda item unless the Port Commission adopts a shorter period on any item.

8. PUBLIC COMMENT ON ITEMS NOT LISTED ON THE AGENDA

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during Public Comment Period. A member of the public has up to three minutes to make pertinent public comments. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406. No Commission action can be taken on any matter raised during the public comment period for items not listed on the agenda other than to schedule the matter for a future agenda, refer the matter to staff for investigation or respond briefly to statements made or questions posed by members of the public. (Government Code Section 54954.2(a))

9. EXECUTIVE

A. Executive Director's Report

- Forest City Place-Making Event at Pier 70: Urban Air Market – August 18, 2013
- ILWU and Port Partner for "LaborFest" and Port's 150th Anniversary Celebration – September 2, 2013 at Longshoremen's Hall, 301 Beach Street, San Francisco
- Bay Area Association of Disabled Sailors and South Beach Yacht Club Hosts the 2013 North American Combined Access Class Championships - September 3-6, 2013 at South Beach Harbor
- Pier 70 Crane Cove Park Design Review - September 9, 2013, 4:30 p.m. Site Visit & 5:30 p.m. Design Review at Noonan Building
- California Preservation Foundation's 30th Annual Historic Preservation Awards Ceremony: Port of San Francisco Recipient of Award for the Reconstruction of the Historic Pier 29 Bulkhead – September 27, 2013, 6:00 p.m. at Merchant's Exchange Building, 465 California Street, San Francisco
- In Memoriam – Tom Meredith, Captain of *Butchie B*

- B. In celebration of the Port's 150th Anniversary: Presentation on Commercial Fishing and Fish Processing Business at the Port of San Francisco

- C. Request approval of Memorandum of Understanding among the City's Office of Economic and Workforce Development, the Port and the America's Cup Organizing Committee regarding the Pilot Donor Recognition Program in

association with *OneSF: Celebrate the Cup* at Piers 27-29. (Resolution No. 13-31)

10. CONSENT

- A. Request approval for a San Francisco Port Commissioner to travel with Port Maritime Staff to New Orleans, Louisiana to attend the Breakbulk Americas Conference on September 23-26, 2013. (Resolution No. 13-28)
- B. Request authorization to award Construction Contract No. 2761, Blue Greenway Signage Project, to Cal State Constructors, Inc., in the amount of \$681,547, and authorization for a contract contingency fund of 10% of the contract amount (or \$68,155) for unanticipated contingencies for a total authorization of \$749,702. (Resolution No. 13-29)

11. FINANCE & ADMINISTRATION

- A. Request authorization to enter into a one year contract with the San Francisco Conservation Corps (SFCC) in the amount of \$285,000 to provide and administer the Port's Youth Employment Program. (Resolution No. 13-30)

12. REAL ESTATE

- A. Informational presentation on the Port of San Francisco's Leasing Practices.

13. PLANNING AND DEVELOPMENT

- A. Informational presentation by (1) San Francisco Waterfront Partners III, LLC, and (2) TMG Pier 38 Partners, LLC, a joint venture partnership consisting of TMG Partners and Premier Structures, the respondents to the Request for Proposals for the Pier 38 Bulkhead Rehabilitation Project, located at Delancey Street and The Embarcadero.

14. NEW BUSINESS

15. ADJOURNMENT

**FORWARD CALENDAR
(TARGETED COMMISSION MEETING, SUBJECT TO CHANGE)**

SEPTEMBER 10, 2013

	FACILITY/POLICY	ITEM	TITLE
1	Pier 27	Informational	Presentation by Port's cruise consultant describing business models for comparable North American cruise terminals
2	Pier 70	Informational	Presentation on the Pier 70 Crane Cove Park Master Plan, Phasing Plan and Cost Estimate
3	Ferry Building Area	Informational	Presentation by Water Emergency Transportation Authority on current and future ferry service from San Francisco
4	Pier 38	Informational	Presentation of the Pier 38 developer selection process
5	Pier 70	Action	Approval of Lease No. L-15690 and L-15691 with Affordable Self Storage, Inc. for a container storage facility on paved vacant land within Pier 70 in the Southern Waterfront
6	Pier 33½	Action	Authorization to issue Request for Proposal for Retail/Restaurant Opportunity for a site located in the Pier 33½ Bulkhead Building
7	Army Street, Islais Street, and Pier 90	Action	Authorization to advertise for competitive bids for Construction Contract No. 2758, Bayview Gateway & Tulare Park Projects
8	Portwide	Action	Accept the Port's Report on Contracting Activities for Fiscal Year 2012-13 (July 1, 2012 through June 30, 2013) and informational presentation by the Office of Economic and Workforce Development concerning the City's workforce development program.

SEPTEMBER 24, 2013

	FACILITY/POLICY	ITEM	TITLE
1	Pier 27	Informational	Presentation on the James R. Herman Cruise Terminal Management Agreement with the highest ranked management team
2	Pier 70	Informational	Presentation on Orton Development Inc.'s project at the 20 th Street Historic Buildings Project at Pier 70
3	Portwide	Action	Authorization to award the contract for As-Needed Environmental and related Professional Services for three contracts at \$1 million each, totaling \$3 million
4	Portwide	Action	Approval to revise the existing Board Resolution

			of Intention to form the Port Infrastructure Financing District and Designation of Project Areas
5	Portwide	Action	Implementation of a 1.7% General Rate Increase for all items in the Port of San Francisco's Tariff Federal Maritime Commission 5, as approved by the California Association of Port Authorities (effective September 1, 2013)
6	Pier 38	Action	Authorization to enter into exclusive negotiations with the best qualified Pier 38 developer
7	Portwide	Action	Approval of: (1) issuance of Port of San Francisco Series 2013 Revenue Bonds to fund certain improvements on Port property in the aggregate principal amount not to exceed twenty six million dollars (\$26,000,000) with an interest rate not to exceed twelve percent per annum; (2) the forms of Indenture of Trust between the Port and a trustee; (3) the sale of the Bonds by negotiated sale pursuant to a purchase contract; (4) the form of a bond purchase contract; (5) the preliminary form of the Official Statement relating to the Bonds and the distribution of the statement; and (6) the form of the Continuing Disclosure Certificate of the Port and the execution of the certificate.
8	Pier 98	Action	Authorization to Issue a Request for Proposals to Lease the "EcoCenter at Heron's Head Park" and surrounding 6,058 square feet of non-exclusive license area.

OCTOBER 8, 2013

	FACILITY/POLICY	ITEM	TITLE
1	Seawall Lot 337	Informational	Update on the mixed-use development project for Seawall Lot 337 and Pier 48 bounded by China Basin Channel, Third Street, Mission Rock Street, and San Francisco Bay and adjacent to AT&T Park
2	Pier 27	Action	Approval of the James R. Herman Cruise Terminal Management Agreement with the highest ranked management team
3	Third Street and Cargo Way Triangle and Cargo Way	Action	Authorization to accept and expend a grant in the amount of \$3,000,000 from the Federal Railroad Administration for improvements to the Quint Street Lead Improvement Project

OCTOBER 22, 2013

	FACILITY/POLICY	ITEM	TITLE
1	Portwide	Informational	Presentation on the proposed adoption of the 2013 Port of San Francisco Building Code
2	Pier 70	Informational	Update on the mixed-use development project by Forest City Development for the Pier 70 Waterfront Site, bordered generally by 20th Street, Michigan Street, 22nd Street and the San Francisco Bay
3	Pier 70	Action	Approval of a lease and development agreement with Orton Development Inc. for the 20 th Street Historic Buildings at Pier 70
4	Pier 98	Action	Authorization to Negotiate and Execute a Mutual Termination Agreement with Literacy for Environmental Justice for Termination of Lease L-13816, which includes the "EcoCenter at Heron's Head Park" and surrounding 6,058 square feet of non-exclusive license area, subject to Board of Supervisors approval of the Mutual Termination Agreement.

DECEMBER 10, 2013

	FACILITY/POLICY	ITEM	TITLE
1	Pier 98	Action	Request authorization to execute a lease for the "Eco Center at Heron's Head Park" and surrounding 6,058 square feet of non-exclusive license area.

DATE TO BE DETERMINED

	FACILITY/POLICY	ITEM	TITLE
1	South Beach	Action	Port Commission's consideration of agreements between the Port Commission and the Successor Agency to mutually terminate 13 ground leases in the South Beach project area and set business terms for the transfer of the South Beach Harbor Program
2	Portwide	Action	Approval to award the Hazardous Waste contract
3	Pier 31	Action	Authorization to advertise for competitive bids for Construction, Pier 31 Building and Roof Repairs
4	Pier 94 and 96	Action	Authorization to advertise for competitive bids for Construction, Pier 94-96 Storm Drain and Outfall repairs

5	Pier 35	Action	Authorization to advertise for competitive bids for Construction, Pier 35 Building and Roof Repairs
6	Portwide	Action	Adoption of the 2013 Port of San Francisco Building Code
7	Army Street, Islais Street, and Pier 90	Action	Authorization to award Construction Contract No. 2758, Bayview Gateway & Tulare Park Projects
8	Pier 31	Action	Authorization to award Construction Contract No. XX, Pier 31 Building and Roof Repairs
9	Pier 94 and 96	Action	Authorization to award Construction Contract No. XX, Pier 94-96 Storm Drain and Outfall Repairs
10	Pier 35	Action	Authorization to award Construction Contract No. XX, Pier 35 Building and Roof Repairs
11	3 rd Street and Cargo Way Triangle and Cargo Way	Action	Authorization to advertise for competitive bids for Construction, Quint Street Lead Improvement Project
12	Copra Loading Dock near Tulare Street	Action	Authorization to advertise for competitive bids for Construction, Copra Crane Refurbishment
13	Pier 70	Action	Authorization to advertise for competitive bids for Construction, Crane Cove Park Project Phase 1
14	Pier 35	Action	Request authorization to advertise for competitive bids for Construction, Pier 35 Substructure Repairs
15	3 rd Street and Cargo Way Triangle and Cargo Way	Action	Authorization to award Construction Contract No. 2764, Quint Street Lead Improvement Project
16	Copra Loading Dock near Tulare Street	Action	Authorization to award Construction No. XX, Copra Crane Refurbishment
17	Pier 70	Action	Authorization to award Construction Contract No. 2740, Crane Cove Park Project - Phase 1
18	Pier 35	Action	Authorization to award Construction Contract No. XX, Pier 35 Substructure Repairs

COMMUNICATIONS TO PORT COMMISSION
From July 5 to August 8, 2013

- From Maureen Gaffney, Bay Trail Planner, regarding San Francisco Bay Trail Map Set
- From Port staff, regarding sponsorship donations in association with the Port's 150th Anniversary celebration

**SEPTEMBER/OCTOBER 2013
CALENDAR OF UPCOMING PORT MEETINGS – OPEN TO THE PUBLIC**

DATE	TIME	GROUP	LOCATION
Sept. 10	2:00 PM Closed Session	Port Commission	Port Commission Hearing Room at the Ferry Building
	3:15 PM Open Session	Port Commission	Port Commission Hearing Room at the Ferry Building
Sept. 24	2:00 PM Closed Session	Port Commission	Port Commission Hearing Room at the Ferry Building
	3:15 PM Open Session	Port Commission	Port Commission Hearing Room at the Ferry Building
Oct. 8	2:00 PM Closed Session	Port Commission	Port Commission Hearing Room at the Ferry Building
	3:15 PM Open Session	Port Commission	Port Commission Hearing Room at the Ferry Building
Oct. 22	2:00 PM Closed Session	Port Commission	Port Commission Hearing Room at the Ferry Building
	3:15 PM Open Session	Port Commission	Port Commission Hearing Room at the Ferry Building

NOTES:

The San Francisco Port Commission meets regularly on the second and fourth Tuesday of the month at 3:15 p.m., unless otherwise noticed. The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com. The Port Commission meetings can be viewed online at http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=92. The Port Commission meetings are also broadcasted on the 2nd & 4th Thursday of the month at 9 p.m. on Comcast Cable Channel 26 or Astound Cable Channel 78 (formerly RCN Cable). Contact Amy Quesada at 274-0406 or amy.quesada@sfport.com

The Fisherman's Wharf Waterfront Advisory Group (FWWAG) meets regularly on a bi-monthly basis, on the third Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Rip Malloy @ 274-0267 or rip.malloy@sfport.com

The Maritime Commerce Advisory Committee (MCAC) meets every other month, on the third Thursday of the month, from 11:30 a.m. to 1:00 p.m. @ Pier 1. Contact Jim Maloney @ 274-0519 or jim.maloney@sfport.com

The Mission Bay Citizens Advisory Committee meets on the second Thursday of the month at 5:00 p.m. in the Creek Room at Mission Creek Senior Building located at 225 Berry Street in San Francisco (along the Promenade just beyond the library.) Contact Catherine Reilly at the former Redevelopment Agency @ 749-2516 or catherine.reilly@sfgov.org

The Northeast Waterfront Advisory Group (NEWAG) meets regularly on a bi-monthly basis on the first Wednesday of the month from 5:00 p.m. to 7:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Jonathan Stern @ 274-0545 or jonathan.stern@sfport.com

The Central Waterfront Advisory Group (CWAG) meets monthly on an as-needed basis, generally on the third Wednesday of the month from 5 to 7 p.m. in the Bayside Conference Room at Pier 1. Contact Mark Paez @ 705-8674 or mark.paez@sfport.com

The Southern Waterfront Advisory Committee (SWAC) meets every last Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david.beaupre@sfport.com

The Waterfront Design Advisory Committee (WDAC) meets jointly with the Design Review Board of the Bay Conservation and Development Commission on the first Monday of the month at BCDC, 50 California Street, Rm. 2600, at 6:30 p.m. The Committee meets as needed on the fourth Monday of the month at 6:30 p.m. in the Bayside Conf. Rm. @ Pier 1. Contact Dan Hodapp @ 274-0625 or dan.hodapp@sfport.com

ACCESSIBLE MEETING INFORMATION POLICY

FERRY BUILDING:

The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142. The nearest accessible parking is provided in the following off-street pay lots: 3 spaces in the surface lot on the west side of the Embarcadero at Washington Street.

Hourly and valet parking is available in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa. Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington, Folsom & Drumm Streets.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact Wendy Proctor, Port's ADA Coordinator, at 274-0592, the Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance:

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Sections 67.1 et seq. of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Chris Rustom by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-7854 or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Rustom or by printing Sections 67.1 et seq. of the San Francisco Administrative Code on the Internet, at <http://www.sfgov.org/sunshine>.

NOTICES

Prohibition of Ringing of Sound Producing Devices:

The ringing of and use of cell phones, pagers, and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic device.

Lobbyist Registration and Reporting Requirements:

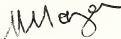
Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code Sections §2.100 – 2.160) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.



MEMORANDUM

August 9, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer 
Executive Director

SUBJECT: In celebration of the Port's 150th Anniversary: Presentation on Commercial Fishing and Fish Processing Business at the Port of San Francisco

DIRECTOR'S RECOMMENDATION: Information Only



Background

On April 24, 2013, the Port of San Francisco marked 150 years since its founding by Legislative action of the State of California. At the request of Port Commission President Doreen Woo Ho, as part of the Port's year-long celebration, at one Port Commission meeting per month, staff is giving a presentation highlighting a unique aspect of the many public benefits and contributions the Port makes to San Francisco and the Bay region. This month's presentation will highlight the Port's Fishing Industry and environs at Fisherman's Wharf. This presentation also complies with Commissioner Willie Adams' request to profile a significant maritime tenant on a regular basis.

THIS PRINT COVERS CALENDAR ITEM NO. 9B

Virtually any white-tablecloth restaurant in San Francisco that offers crab, fresh salmon or a number of other seafood specialties, offers seafood that was either caught, received, or processed at the Port of San Francisco. The continued presence of a healthy fishing industry is essential to maintaining the colorful ambiance and the economic well-being of Fisherman's Wharf as well as serving a huge local demand for seafood.

The Port is the leading fishing industry center in San Francisco Bay and home to close to 20 fish processors and receivers and 165 commercial fishing vessels. The Port is also home to 14 sport-fishing boats that are generally located along Jefferson Street. These vessels offer sport fishing trips and Bay tours to visitors and locals alike.

Pier 45 houses the largest concentration of fish processors of any port in California. A 2001 Port economic impact study of the San Francisco fishing industry prepared by Martin Associates shows that the fishing industry creates over 1,500 direct jobs, of which over 50% are filled by San Francisco residents. Those businesses create over \$176 million of economic impacts to the region, generating \$1 million annually in City taxes. The Port earns \$2.35 million dollars, excluding the Port's operating costs, in annual rents and berthing fees from fish processors, receivers, and fishing boats. Many of the Port's fishing industry tenants have been customers of the Port for four generations.

Crab, Herring and Salmon

The primary catches handled in San Francisco are Dungeness crab, wild salmon, and herring. Perhaps the Wharf's most famous catch is Dungeness crab whose season runs from about Thanksgiving through June. Crab fishermen have earned an average of \$30.4 million per year in the past ten seasons Statewide, maintaining Dungeness crab as one of the most valuable fisheries in California.

Beginning as early as October and continuing as late as April, millions of fertile herring swim under the Golden Gate Bridge and into the bay to spawn. Herring Fishery in San Francisco is one of the nation's last urban fisheries. While herring lay their eggs on almost any surface, many will coat seaweed called kelp with layers of small, rubbery eggs. Within hours, the egg-frosted kelp is harvested, then pickled in brine. Much of the crop is exported to Japan, where it is consumed as a delicacy.

Salmon have traditionally been the mainstay of Pacific Coast fishing. The salmon fishery is impacted directly by climate and tends to thrive after wet, snowy winters that add to the fresh water volumes in the river system. Wild salmon is a delicacy that our fleet brings to restaurants and dinner tables throughout the region.

According to the California Department of Fish and Wildlife, in 2011, eleven million pounds of seafood with a value of over \$21 million was landed in the Port of San Francisco.

The fishing industry in San Francisco is important for many reasons. Its heritage predates the founding of the Port. It represents a food source that is closely managed for sustainability and, since most of the local catch is consumed locally, has a low carbon footprint. It serves a tremendous local demand for seafood. It employs a wide range of San Franciscans and Bay Area natives and it generates strong gross revenues to the

Port. In an effort to preserve this significant public resource, the Port has undertaken major efforts to “keep the fish in Fisherman’s Wharf”. Unlike so many ports that have converted almost all of their assets to container cargo operations, the Port is committed to maintaining its fishing and fish processing assets to serve the people of San Francisco and the Bay Area.

History

People had been making a living fishing and crabbing in San Francisco Bay for years prior to the Port’s official founding in 1863. In the early days of the Port, San Francisco fishing fleet was comprised of lateen-rigged sailboats, called feluccas. They were built in the same style as the boats the local Italian fishermen knew in their native land.



In the late 1800s, San Francisco Bay and the Delta constituted the largest fishing center in California. Salmon, shad, striped bass, and sturgeon were in abundance. Nineteen canneries on the Delta annually canned 200,000 cases of salmon. Bay oysters were also harvested, luring oyster pirates like a young Jack London, who later wrote about the experience. A century ago, crabs were in plentiful supply from the Straits of Carquinez, on the inland reaches of San Francisco Bay to the shorelines off Berkeley, Oakland and Alameda. Today, the crabbers must drop their crab pots out near the Farallon Islands, in 18 to 35 fathoms (i.e., 108-210 feet) of ocean water.



At the turn of the Century a "second generation" of fishing boats - Monterey hull boats - arrived with the introduction of gasoline engines. The gas engines made it possible to fish more days of the year, gave a wider range for operation in ocean water, and provided power to haul in the nets or lines. Today, several Monterey-type boats remain as a part of the Port's fishing fleet.

In 1900, Fisherman's Wharf was moved from the foot of Union Street at approximately the location of Pier 17 today, to its current location. Stalls were built in three buildings along Taylor Street and were numbered from one to nine. The fish processing stalls morphed into restaurants stretching north from Jefferson Street, hence their current names of Alioto's No. 8, Fisherman's Grotto No. 9, etc.

Fisherman's Wharf began as an authentic working wharf, where locals and visitors alike could watch the fleets come into the harbor laden with fish or crab. Fishermen would be tending their nets, repairing their boats and selling their catch to the local receivers and restaurants. For decades the industry flourished and Fisherman's Wharf became the world famous attraction that it is today.

But environmental damage caused by overfishing, development, pollution and non-native species took a heavy toll on the fishing industry. Over time, commercial fishing faded away or was banned inside the Bay. Fisherman's Wharf was neglected by the Port and the City.

Renewal

After decades of neglect, the Wharf infrastructure needed significant reinvestment or risk losing the commercial fishing industry.

In 1974, Mayor Joseph Alioto formed a Citizens Committee for the Preservation and Beatification of Fisherman's Wharf. The Committee focused on the need for the City and Port to improve the Wharf's infrastructure and facilities or risk the loss of one of San Francisco's most important historical industries. The committee's first suggestion was to build a much needed breakwater to solve the vexing problem of surge that damaged boats. It took until October 1986, largely through the efforts of then Mayor Dianne Feinstein and U.S. Senator Pete Wilson, for the completion of the badly needed 1200-foot breakwater, creating a 30-acre protected commercial harbor in which facilities could be rebuilt.

Soon thereafter, ambitious plans were brought to the Port Commission to turn back years of neglect and make Fisherman's Wharf again one of the nation's most modern and vibrant seafood centers. A modern fishing harbor at Hyde Street was proposed to accommodate the newest and largest boats of the fishing fleet. The idea of developing Pier 45 as a new seafood-handling and processing center of the Port was pursued. There were additional threats along the way, with proposals for hotels and other intense commercial developments. The then Port Commission and community rejected those plans and looked to protect and enhance the commercial fishing industry.

Natural Disaster

The Loma Prieta earthquake altered the timeline for renewal. Pier 45, the planned location for a new Seafood Center, suffered significant damage from the earthquake, practically chasing away the last of a dwindling number of fish-handling companies doing business at the Port. The industry's future was in peril. The repair costs for Pier 45 skyrocketed and, for a moment, it seemed that there might no longer be any fishing in Fisherman's Wharf.

Even in face of such a calamity, the then Port Commission directed Port staff to continue working on the above-mentioned goals. Using Federal, State and Port money, the Port began a \$14 million earthquake repair project at Pier 45 which when completed, turned a decrepit, seismically unsafe pier into a modern fish-receiving and processing center. Pundits at the time said that the industry was "too far gone" and that even if built, the industry would never again centralize in San Francisco.

A new seismically-safe and modern seafood center with improved environmental features opened in 1995. The receiving and processing companies flocked back to Fisherman's Wharf and the sheds were leased to capacity almost immediately. Today Pier 45 has 108,000 square feet of modern fish handling and distribution space, leased to about 20 fish processors and receivers and is Northern California's leading seafood center. The Project improvements addressed many but not all of the difficulties that the industry faced in the congested Fisherman's Wharf surroundings.

Hyde Street Harbor

The next major infrastructure project aimed at revitalizing the Port's commercial fishing industry was the construction of the new Hyde Street Harbor, built with approximately \$7 million of State and Port funds to provide berthing for the larger, more modern fishing vessels. Opening in 2001, the harbor has 62 larger berths that provide modern amenities and access to allow larger transient boats seeking seasonal catches a safe harbor. With Salmon season now in full swing, the harbor provides the fleet safe berthing, amenities, showers, fuel, and nearby buyers. This fall will see the crab boat owners gear up with crab pots waiting for that season to commence, again with the knowledge of nearby buyers ready to market and distribute the catch.



Recent Improvements

In 2012, a new \$2 million Harbor Office and Joint Operations Facility (housed by safety personnel and first-responders) was completed at the entrance to Hyde Street Harbor. Funded by State security grants and Port capital funds, a 50-year old aluminum shed was transformed and now provides amenities for local and visiting commercial fishermen and boaters, including public restrooms with showers, storage areas for oil, waste oil disposal, oil clean-up equipment, and bilge pumps. A new accessible Port harbor office was constructed and is now manned by Port wharfing staff. The new harbor facility also houses the San Francisco Police Department Marine Unit, Dive Team and San Francisco Fire Department fast response crews. The fully equipped dive locker jointly serves SFPD, SFFD and Port dive teams. The facility is the Port's Alternate Department Operations Center (DOC).

Additionally, a \$900,000 rebuild of Wharf J-4 in the inner lagoon was undertaken and completed by the Port Maintenance Division.

Conclusion

Commercial fishing and processing in San Francisco predates the Port. It is a vital maritime industry that requires continual nurturing and attention from the Port, City and community. Wild salmon, crab, sand dabs, and other seafood delicacies do not magically appear in grocery stores and on restaurant menus. Fishermen and their families sail the Pacific and Bay searching for their catch, while receivers and processors market and distribute to the region. The Port greatly values the fishing industry and understands our role to nurture and protect this vital industry. The Port is proud to maintain this historical service on behalf of our City and our region.

Prepared by: Peter Dailey
Deputy Director, Maritime



MEMORANDUM

August 9, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *Moyer*
Executive Director

SUBJECT: Request approval of Memorandum of Understanding among the City's Office of Economic and Workforce Development, the Port and the America's Cup Organizing Committee regarding the Pilot Donor Recognition Program in association with *OneSF: Celebrate the Cup* at Piers 27-29

DIRECTOR'S RECOMMENDATION: Approve attached resolution

Introduction

At its hearing on April 5, 2013 the Port Commission was presented with an initial proposal outlining a pilot donor recognition program (the "Pilot Program") centered on Piers 27-29 in conjunction with the 34th America's Cup and related regattas ("AC34"). The proposal, made as part of a joint initiative of the City and County of San Francisco (City) and the San Francisco America's Cup Organizing Committee (SFACOC) known as *ONESF: Celebrate the Cup*, is intended to encourage financial support by individuals, families and local businesses for the benefit of the Port and City in hosting AC34. The Pilot Program will leverage the SFACOC's fundraising capabilities and the Port's ability to integrate donor recognition into public improvements on AC34 venue sites to obtain private funding for certain improvements and operational activities on Port property related to AC34.

Staff of the Port, SFACOC and the City have incorporated the Port Commission's feedback into the attached Memorandum of Understanding (MOU) setting forth the terms and conditions of a pilot program modeled after other similar programs in the City at cultural, community and public spaces and parks. Aside from the Pilot Program's immediate objective of funding Port and City costs associated with hosting AC34, an added legacy

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benefit of this initiative is that its structure will provide a foundation for any donor recognition program that Port Commission decides to pursue in the future on a broader basis.

Background

The SFACOC was established as a nonprofit corporation in 2010 to support the City's bid to bring the 34th America's Cup ("AC34") to San Francisco. Upon the City's selection as host city in December 2010, SFACOC, the City and the America's Cup Event Authority all entered a Host and Venue Agreement (the "Host Agreement") to reflect the allocation of responsibilities in hosting AC34. Among these was SFACOC's commitment to endeavor to raise funds from private sources to defray the public costs of the AC34 events. In 2011 SFACOC secured its tax-exempt nonprofit status and expanded its membership to include 75 community and corporate leaders in furtherance of its responsibilities under the Host Agreement. On June 5, 2012, the City entered into a Memorandum of Understanding with the SFACOC (the "City MOU") that governs the transfer of funds raised by the SFACOC to the City in respect of public AC34-related costs. Over the last two years the SFACOC has implemented a philanthropy-based fundraising program and contributed key community expertise to the drafting of the event implementation plans. To further these efforts SFACOC partnered with the City to launch *OneSF – Celebrate the Cup*, an initiative that includes three fundraising pillars: (i) expanding the individual/family/foundation philanthropy program; (ii) establishing a local corporate partner program and (iii) developing the donor recognition program described here.

The donor recognition initiative referenced here and proposed in the attached MOU is modeled on other successful programs in the City, while taking into account the unique legal status of the Port under the Charter and as trustee under the Burton Act. A prime local example of a similar program is the San Francisco Recreation and Parks Department, which has a partnership with the nonprofit San Francisco Parks Alliance to administer donor recognition assets within San Francisco's parks with the donations enhancing parks and recreation centers in San Francisco. The new Exploratorium, California Academy of Sciences, Legion of Honor, de Young Museum and Davies Symphony Hall, among many cultural institutions, have utilized similar programs to attract funders. In these facilities, donor recognition plaques have been placed on staircases, alcoves, lounges, exhibits and other spaces naming individuals, families and local businesses who have made contributions. Most of the City's cultural and public institutions have formal and ongoing donor recognition programs to recognize past donations or gifts, such as a contribution to a capital campaign, or as an ongoing source of revenue.

In crafting this proposal the SFACOC has evaluated and incorporated best practices from these successful initiatives, including but not limited to the San Francisco Recreation and Parks Department's gift recognition guidelines. The result is a targeted initiative to raise funds from donors and in turn recognize those gifts with plaques on benches, planters, or other elements inside the James R. Herman Cruise Terminal and within the Northeast Wharf Plaza that will be installed as part of Phase 2 of the Cruise Terminal project in a limited number of valued locations, as discussed below.

Goals of the Pilot Donor Recognition Program:

Staff of SFACOC, in consultation with the City and the Port, has crafted a Pilot Program which, first and foremost, celebrates the transformation of Piers 27/29 into the latest attraction along the waterfront. The efforts and resources of the Port thus far resulted in an efficient and effective implementation process for AC34, and catalyzed legacy improvements and community benefits around the City. The Pilot Program represents one way for the City, SFACOC and its donors to thank the Port for its leadership.

Specifically the objectives of the Program are:

- Raise revenues to cover certain capital and operational expenses on Port property associated with preparing for and hosting the 34th America's Cup.
- Where applicable, provide the funding for additional public amenities in the Northeast Wharf Plaza that are not otherwise funded from general obligation bond proceeds.
- Provide a real-world test of the donor market as it relates to the Port, in order to evaluate whether an expanded donor recognition program, such as employed on behalf of other City departments, could create an ongoing revenue source for the Port.
- Offer a variety of donation levels so the full spectrum of community and waterfront supporters can participate in the program.

At its April 5, 2013 meeting, the Port Commission requested a detailed briefing of the potential price points for the proposed Pilot Program. At the Port Commission's August 13, 2013 meeting, SFACOC plans to present its projections for each of these opportunities during its presentation.

Specific Site Considerations:

As the Port finalizes a number of elements for the Cruise Terminal and Northeast Wharf Plaza that will be installed as part of Phase 2 of the project, City and SFACOC staff have been working with the Port team to identify complementary components of the project that could integrate donor recognition into the planned upgrades. What follows is a comprehensive list of proposed recognition opportunities under current consideration, with varied potential price points. Specifically, the opportunities covered by the proposed MOU include:

- Up to 1000 bricks that would line the edge of the lawn in the Northeast Wharf Plaza.
- Up to 72 benches located throughout the Northeast Wharf Plaza.

- The following elements within the proposed parks and open space at Piers 27-29: the lawn, the walkway adjacent to the lawn, the open plaza area, and the point at the eastern end of the piers.
- The following elements within the James R. Herman Cruise Ship Terminal: the second floor event space and the exterior concourse on the second floor.
- A donor recognition wall at the western end of the second floor event space within the James R. Herman Cruise Ship Terminal, acknowledging investment in the San Francisco Waterfront.

The proposal does not include “naming rights” for any Port parks, piers, or buildings. In addition, as noted above in the Goals section, the specific donor recognition funds will be used for installations not funded by general obligation bonds. This reflects a strategy seen at several general obligation bond-funded facilities within the City; due to legal limitations on the use of such bond funds under state law, equipment and furnishings must be paid from other sources. The rebuild of Laguna Honda Hospital was one example of a project that sought to augment its bond funding with a philanthropic fundraising campaign, which allowed the project both to finance items not eligible for bond funding and to reallocate available bond funds to other unfunded aspects of the project plan.

Funding

The particulars of each donor recognition relationship will be established through the execution of the proposed MOU and a Donor Recognition Agreement in the form attached thereto.

As noted in the MOU, the Port, SFACOC and the City's Department of Economic and Workforce Development would be required to agree in writing on a Pilot Program budget before any donations are accepted. This budget will include more detailed projections of costs to fulfill the donor recognition (e.g. design, fabrication and installation of plaques) as well as SFACOC's costs to promote the opportunity and to administer the program. In the time since the April 5, 2013 presentation SFACOC has spent approximately \$35,000 to develop the initial framework of the Pilot Program modeled after other successful programs as noted above, to design promotional materials, and to assess interest in the potential donor pool for the types of recognition assets being proposed here. SFACOC has incurred these costs prior to full endorsement at its own risk, in order to move the proposal forward and respond to requests for more details before endorsement. SFACOC's access to Pilot Program revenues to pay such costs, along with the cost of further efforts to refine the Pilot Program and to communicate the opportunity to potential donors, would be governed by this agreed program budget. The resolution approving the MOU dictates that the Executive Director would only approve the program budget if its costs were reasonable in relation to the overall opportunity. The MOU further provides that the costs of fulfilling each donor recognition agreement shall be paid in full or sufficient funds set aside before any promotion or administration costs are paid from Pilot Program sources.

This budget agreement will also establish a hierarchy of uses for the net receipts after payment of Pilot Program costs, the approval of which would be within the sole discretion

of the Executive Director, based on the Executive Director's determination that the uses and priority of payments would provide the Port with a reasonable return for its contribution to the Pilot Program and are consistent with the Port's responsibilities under the Charter and the Public Trust. Consistent with SFACOC's fulfillment of its charitable purpose, all costs would be applied to pay eligible costs associated with hosting the Event. If donations exceed expectations, any excess beyond what is needed to fund the hierarchy of eligible uses would be applied to reimburse the Harbor Fund for capital improvements to Port AC34 venues for which the Port does not have a budgeted source. The current list of expenditures under consideration for the Budget Agreement is set forth in the following table:

Expenditure Item	Estimated cost
Pier 29 substructure and end wall improvements	\$1,600,000
Port venues – portable toilet facilities and servicing*	\$1,000,000
Port venues – utility costs*	\$1,000,000
Consultant fees and title reports relating to Port property	\$273,000
Port tenant relocation costs	\$100,000
Piers 30-32 upgrades	\$5,000,000
Pier 19 South apron improvements	\$1,400,000
Total	\$10,373,000

Once the MOU and budget agreement noted above are executed by the Port, SFACOC and the City, the Pilot Program would be ready to move forward. Each donor or group of donors would execute an agreement by which the details of the recognition relationship would be agreed to with the Port and the SFACOC. These agreements would include the location, form and content of the installation, the funding amount and payment schedule, and the term of the recognition relationship. The parties currently intend for the term of recognition to extend no longer than the expected useful life of the underlying asset (e.g. ten years for a bench), and in no event would the term extend beyond [30] years without further Port Commission approval in its sole discretion. In addition, no renewal options or rights of first refusal would be offered at this time for further recognition at the end of the term, though the donors may seek approvals under a successor program should one be established in the future.

As described in the MOU, revenues from each donor recognition agreement would be allocated as follows:

- First, all costs of fulfilling the donor recognition installation shall be paid in full, or amounts sufficient to satisfy such gift fulfillment activities should be set aside for such purpose;
- Second, no more than 50% of the remaining revenues after the gift fulfillment costs are paid or set aside shall be applied to pay or reimburse SFACOC's costs of promoting and administering the Pilot Program, as approved under the budget agreement; and

- Third, all remaining revenues after the payments summarized above shall be used to pay or reimburse costs of AC34 activities on Port property in the priority defined in the budget agreement.

Until the list of donor recognition assets is finalized and the program marketing commences it is difficult to ascertain the total potential revenue to be derived from the program. However, one specific example pertains to recognition plaques placed on benches. When completed, there are anticipated to be 70 benches within the designed Northeast Wharf Plaza. If each were available to recognize a \$25,000¹ contribution for the Pilot Program, \$1,750,000 could be generated before payment of expenses. The cost of the benches, installation, plaques, etc. is estimated at \$350,000-\$400,000, and therefore the program conservatively could realize \$1.35 to \$1.4 million from this set of commemorative assets, which would then be allocated to program costs and the expenditures listed in the budget agreement, as described above. The typical "guaranteed term" of a commemorative bench is 10 years, the normal life cycle of an outdoor bench in San Francisco. If the program makes an additional round of donor recognition available when the benches need to be replaced and their associated donor terms expire, the Port could realize additional monies from future contributions.

The SFACOC's fundraising program under the Host Agreement will terminate at some point following completion of AC34 in September 2013. With that in mind, the attached MOU and Pilot Program strategy has been crafted to allow for a smooth transition both to the implementation phase of the AC34 program as well as to any potential Port-wide donor recognition program that seeks to build off of the lessons learned from this initiative.

Schedule

The SFACOC, Port and City team would like to execute and implement the MOU as soon as possible in order to capitalize on the growing interest of local residents in AC34 in general and Piers 27-29 in particular during the peak of the regatta. As authorized by the Port Commission the MOU and subsequent Donor Recognition Agreements will provide the legal obligations and implementation details for the fulfillment of donor commitments and successful completion of the Pilot Program. With approval of the Pilot Program the promotion of the opportunity to potential donors can begin in earnest. While certain elements of the Pilot Program like the bricks and the benches will have a short sales cycle measured in weeks or even days, the higher value items are likely to require 6-9 months or more from cultivation to commitment. The MOU calls for progress reports to the Port Commission by SFACOC starting in January 2014 and quarterly thereafter until the close of the Pilot Program or the expiration of the SFACOC's fundraising program, whichever is sooner.

If approved, the SFACOC Development Team, in partnership with City leadership, will present the donor recognition elements to targeted audiences through specific meetings, events, fundraisers, media outreach and promotion over the end of the year. The

¹ \$25,000 is the contribution cost for benches at the Palace of Fine Arts, Union Square and Harding Park

SFACOC staff and consultant team is managing and implementing the program as part of the *ONESF: Celebrate the Cup* campaign (www.onesfcelebratethecup.com).

Summary

With the Port Commission's guidance and approval, the SFACOC and the City look forward to the opportunity to partner with the Port to implement a Pilot Program that will not only raise revenue for AC34 but will also set the stage for similar activities to bolster the Port's continuing transformation as it becomes an ever more valued cultural asset for citizens of and visitors to San Francisco.

Prepared by: Kyri McClellan, SF America's Cup Organizing Committee

Michael Martin, Department of Economic & Workforce Development

Attachment: Draft Memorandum of Understanding

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 13-31

- WHEREAS, Charter Section B3.581 provides the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and
- WHEREAS, The America's Cup Host and Venue Agreement, dated as of December 31, 2010 (the "Host Agreement"), by and among the City and County of San Francisco (the "City"), the America's Cup Event Authority, LLC, and the San Francisco America's Cup Organizing Committee ("SFACOC"), sets forth the rights and responsibilities of each of the parties in hosting the 34th America's Cup and related regattas in San Francisco Bay (the "Event"); and
- WHEREAS, Under the Host Agreement the SFACOC agreed to undertake a philanthropic fundraising campaign to assist in defraying the public costs of hosting the Event, including those of the City and its constituent departments such as the Port of San Francisco (the "Port"); and
- WHEREAS, Staff of SFACOC, the Port, and the City's Department of Economic and Workforce Development (the "Department") have discussed the potential for SFACOC to partner with the Port in establishing a pilot donor recognition program (the "Pilot Program") on Port property that would assist in defraying Event costs and potentially set the stage for further donor recognition efforts by the Port in the future and similar to other City departments; and
- WHEREAS, At a meeting of the Port Commission on April 5, 2013 staff of SFACOC and the Department presented an outline of the Pilot Program proposal and received feedback from the Port Commission, which has been incorporated into a more detailed proposal, including a proposed Memorandum of Understanding (the "MOU") among SFACOC, the Department, and the Port Commission establishing the Pilot Program framework that was described in the staff report accompanying this resolution and presented to the Port Commission at its meeting on August 13, 2013; and
- WHEREAS, The Port Commission now wishes to take necessary steps to commence the Pilot Program on the terms set forth in the MOU and related staff report; now, therefore, be it
- RESOLVED, That the proposed MOU among the Department, SFACOC, and the Port Commission presented to the Port Commission on August 13, 2013 is hereby approved; and, be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director to: (1) enter into the MOU on terms consistent with the Port Commission's directives and the proposed MOU accompanying this resolution; (2) approve SFACOC's proposed budget agreement for the Pilot Program if the Executive Director determines that the budget estimates are reasonable in relation to the proposed donation levels, and that the expenditures and priority order of payment set forth in the agreement will provide the Port with a reasonable return for its contribution to the Pilot Program and are legally appropriate in light of the Port's responsibilities under the Charter, the common law public trust for navigation, fisheries, and commerce, and the trust under the Burton Act, and the Executive Director is otherwise satisfied that the proposed budget meets the terms set forth in the MOU; (3) after the Executive Director has approved the budget, enter into Donor Recognition Agreements with donors to the Pilot Program in substantially the form attached to and in accordance with the MOU; and (4) take subsequent acts in furtherance of the MOU (including any additions or modifications to the MOU that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the Port and are necessary or advisable to implement the MOU and do not materially increase the obligations or liabilities of the Port, will not have any material adverse fiscal impact on the Port or materially diminish the rights of or benefits to the Port and are necessary or advisable to implement the MOU and effectuate the purposes and intent of this Resolution, such determination to be conclusively evidenced by the Executive Director's execution and delivery of the MOU); and be it further

RESOLVED, That the Port Commission hereby confirms and ratifies all prior actions taken by any officials, employees and agents of the Port Commission with respect to implementing the MOU and the Pilot Program.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 13, 2013.

Secretary

**MEMORANDUM OF UNDERSTANDING
AMONG
THE CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND
THROUGH THE PORT COMMISSION,
THE SAN FRANCISCO AMERICA'S CUP ORGANIZING COMMITTEE
AND
THE CITY AND COUNTY OF SAN FRANCISCO, OPERATING BY AND
THROUGH THE DEPARTMENT OF ECONOMIC AND WORKFORCE
DEVELOPMENT**

Re: Pilot Donor Recognition Program

This MEMORANDUM OF UNDERSTANDING ("MOU") is entered into as of August 15, 2013 by and among the City and County of San Francisco (the "City") operating by and through the Port Commission (the "Port"), the San Francisco America's Cup Organizing Committee (the "ACOC"), a non-profit corporation, and the City, operating by and through the Department of Economic and Workforce Development (the "Department" and together with the Port and ACOC, the "Parties") to memorialize the understandings, obligations, commitments and expectations of the Parties relating to the referenced donor recognition program on Port property (the "Pilot Program").

RECITALS

A. The Burton Act and Charter Section B3.581 empower the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within the Port jurisdiction ("Port Property"). Port Property is subject to the common law trust and the trust imposed by the Burton Act (collectively, the "Public Trust").

B. On December 31, 2010, the City was selected by the Golden Gate Yacht Club of San Francisco to host the 34th America's Cup and related regattas (the "Event") pursuant to the America's Cup Host and Venue Agreement (the "Host Agreement") among the City, the ACOC and the America's Cup Event Authority.

C. Under Section 9.3 of the Host Agreement, the ACOC will endeavor to raise funds from private sources to reimburse the City (including the Port) for a portion of the City's expenditures required to meet its obligations under the Agreement or lost revenues resulting from the City's performance of such obligations.

D. ACOC and the Department have entered a Memorandum of Understanding dated June 1, 2012 (the "ACOC-Department MOU") that sets forth the relationship by which ACOC conveys funds to the City in respect of the fundraising program called for under the Host Agreement.

E. In connection with its fundraising endeavors, ACOC has engaged in a dialogue with the Port and the Department regarding the potential to recognize donors

who make contributions to defray Port-related expenses associated with the preparation and implementation of the Event. The Pilot Program will leverage the ACOC's fundraising capabilities and the Port's ability to integrate donor recognition into public improvements on the Event venue sites to obtain private funding for those improvements and other Port activities related to the Event. The costs of the program will be paid for out of the program proceeds in accordance with the terms of this MOU.

F. Accordingly, the Parties now enter this MOU to reflect the appropriate process and responsibilities to implement the referenced Pilot Program.

NOW, THEREFORE, in consideration of the mutual promises set forth in this MOU, the Parties hereby agree as follows:

1. Term of Pilot Program.

1.1 Expiration. This MOU shall be effective from the date it is fully executed (the "Effective Date") until June 30, 2014 or until ACOC concludes its fundraising program, whichever is earlier (the "Termination Date"). The Parties agree that donor recognition agreements in substantially the form attached as Attachment A (each, a "Donor Recognition Agreement") executed prior to the expiration of this MOU will be binding and survive termination of this MOU.

1.2 Future Donor Recognition Activities. The Parties acknowledge that the Port may continue with a recognition program under a similar structure after this MOU has expired, but the specifics of that program would be subject to separate authorizations and agreements, including Port Commission approval thereof.

2. Donor Recognition Agreements

2.1 Authorization. In its approval of this MOU the Port Commission delegated to the Executive Director of the Port the authority to (a) execute the Budget Agreement described in Section 3.1 if the Executive Director determines that the budget estimates are reasonable in relation to the projected magnitude of donations, and the hierarchy of costs is appropriate in light of the Port's Charter and Public Trust responsibilities, and (b) following the Executive Director's approval of the budget for the Pilot Program, enter into Donor Recognition Agreements with the ACOC and its donors regarding their respective rights and obligations relating to donor recognition sites on Port Property in connection with the ACOC fundraising activities set forth above (each, a "Donor Recognition Agreement") as further set forth in this MOU.

2.2 Approved Recognition Sites. Attachment B reflects the donor recognition opportunity sites on Port Property that have been reviewed by the Parties and approved by the Port as of the Effective Date. Opportunities not on this list are not subject to the terms of this MOU and would require separate review and approval by the Parties, including the Port Commission.

2.3 Contents. Donor Recognition Agreements shall be generally in the form of Attachment A and at a minimum will include the following elements:

- a. Specific location, form and content of donor recognition installation;
- b. Funding amount and payment schedule; and
- c. Term of recognition rights.

3. Funding Provisions.

3.1 Budget Agreement. The Parties agree that on or before the date this MOU is executed the Department, ACOC and the Executive Director shall enter into a letter agreement which details the approved line item budget and priorities for the uses of funds for the Pilot Program (the “Budget Agreement”). The amounts set forth in the Budget Agreement will be a cap on payment from the Pilot Program for such costs, which may not be exceeded absent the Executive Director’s prior approval of an amendment to the Budget Agreement in her sole discretion. The Budget Agreement will include more detailed estimates of the costs to fulfill the donor recognition (e.g. design, fabrication and installation of plaques) (“Gift Fulfillment Costs”) as well as ACOC’s costs to promote and administer the opportunity (“Approved Program Costs”). Approved Program Costs shall include \$35,000 expended by ACOC in furtherance of the Pilot Program prior to the Effective Date. The Budget Agreement will also establish a hierarchy of uses of the receipts of the Pilot Program, net of the Gift Fulfillment Costs and the Approved Program Costs (“Net Program Revenues”). The Budget Agreement will also set forth Donor Recognition Agreement term limitations for each type of opportunity site as established by the Executive Director in her sole discretion after consultation with ACOC and the Department.

3.2 Eligible Expenditures. All Net Program Revenues must be allocated to costs related to the Event or an Event venue site (“Eligible Expenditures”). Such costs may include payment or reimbursement to the Port and to the City for improvements to Event venue sites or services related to the Event, subject to the Executive Director’s approval of Eligible Expenditures and priority order of payment in the Budget Agreement. Approval of the Eligible Expenditures and the priority of payment of those expenditures to be included in the Budget Agreement and any amendments to the budget shall be within the sole discretion of the Executive Director, based on the Executive Director’s determination that the Port will receive a reasonable return for its contribution to the Pilot Program and that the expenditures are consistent with the Port’s responsibilities under the Charter and the Public Trust. The approved budget, including any amendments, shall be binding on all Parties. The Department’s signature on the Budget Agreement will constitute the Department’s authorization and direction to pay the listed uses as set forth therein, for purposes of accounting under the ACOC-Department MOU governing the City’s overall fundraising relationship with ACOC.

3.3 Allocation of Pilot Program Revenues. Revenues from each Donor Recognition Agreement shall be allocated in the following order of priority:

(a) First, all Gift Fulfillment Costs shall be paid in full, or amounts sufficient to satisfy such gift fulfillment activities should be set aside for such purpose;

(b) Second, no more than 50% of the remaining Net Program Revenues after the payment in clause (a) above shall be applied to pay or reimburse Approved Program Costs based on demonstration of actual outlays not exceeding the amounts approved under the Budget Agreement; and

(c) Third, all remaining Net Program Revenues after the payments in clauses (a) and (b) above shall be used to pay or reimburse Eligible Port Expenditures in the priority defined in the Budget Agreement.

If the Pilot Program exceeds expectations, any Net Program Revenues remaining after payment of all Eligible Expenditures under clauses (a), (b), and (c) above will be applied to reimburse the Harbor Fund for the Port's expenditures to Event venues on Port land for which the Port does not have a budgeted source of reimbursement.

3.4 Progress Reports. ACOC shall provide reports to the Port Commission on the progress of the Pilot Program beginning in January 2014 and quarterly thereafter until a final report is provided on the Termination Date. The final report must be provided within two weeks after the Termination Date.

4. Notices

4.1 Any notice given under this MOU must be provided in writing and delivered in person, by commercial courier, or by registered, certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing addresses below. All notices under this Agreement will be deemed given, received, made, or communicated on the business day personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

4.2 For the convenience of the Parties, copies of notices may also be given by email, facsimile, or telephone, but email, telephonic, or facsimile notice will not be binding on any Party. The effective time of a notice will not be affected by the time that email, telephonic, or facsimile notice was delivered.

If to Port:	Port of San Francisco
	Pier 1, The Embarcadero
	San Francisco, CA 94111
	Attn: Executive Director
	Phone: (415) 274-0401
	Fax: (415) 274-0412
	Monique.moyer@sfport.com

If to Department: City and County of San Francisco
Department of Economic and Workforce Development
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: America's Cup Project Director
Phone: 415-554-6937
Fax: 415-554-4565
Email: Michael.martin@sfgov.org

If to ACOC: San Francisco America's Cup Organizing Committee
Pier 1
The Embarcadero
San Francisco, CA 94111
Attn: Alex Lonne, Chief Operations Officer
Phone: (415) 813-1671
Email: Alex@sfacoc.org

5. Miscellaneous

5.1 Governing Law. This MOU shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

5.2 Amendments. Neither this MOU nor any term or provision hereof may be changed, waived, discharged or terminated, except by a written instrument signed by all Parties or except as otherwise expressly provided herein.

5.3 Counterparts. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day first mentioned above.

DATED: _____ CITY AND COUNTY OF SAN FRANCISCO,
OPERATING BY AND THROUGH ITS PORT
COMMISSION

By: _____
Monique Moyer
Executive Director

Authorized by Port Commission Resolution
No. 13-____

DATED: _____ AMERICA'S CUP ORGANIZING COMMITTEE:

By: _____
Mark Buell
Chairman

DATED: _____ CITY AND COUNTY OF SAN FRANCISCO,
OPERATING BY AND THROUGH ITS
DEPARTMENT OF ECONOMIC AND
WORKFORCE DEVELOPMENT:

By: _____
Michael Martin
America's Cup Project Director

REVIEWED:
Dennis J. Herrera , City Attorney

By _____
Deputy City Attorney

ATTACHMENT A

Form of Donor Recognition Agreement [to come]

ATTACHMENT B

Donor Recognition Opportunities Contemplated Under this Agreement

- Up to 1000 bricks that would line the edge of the lawn in the Northeast Wharf Park.
- Up to 70 benches located throughout the Northeast Wharf Park and Plaza.
- The following elements within the proposed parks and open space at Piers 27-29: the lawn, the walkway adjacent to the lawn, the plaza with planters, and the point at the eastern end of the piers.
- The following elements within the James R. Herman Cruise Ship Terminal: the second floor event space and the exterior concourse on the second floor.
- A donor recognition wall at the western end of the second floor event space within the James R. Herman Cruise Ship Terminal, acknowledging investment in the San Francisco Waterfront



MEMORANDUM

August 8, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *MM*
Executive Director

SUBJECT: Request approval for a San Francisco Port Commissioner to travel with Port Maritime Staff to New Orleans, Louisiana to attend the Breakbulk Americas Conference

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Executive Summary:

Port staff requests that the Port Commission approve Commissioner Willie Adams' travel to New Orleans, LA to attend the Breakbulk Americas conference on September 23-26, 2013. Commissioner Adams would accompany the Port's Deputy Director for Maritime and the Cargo Marketing Manager. This trip will give the Port Commissioner an opportunity to meet current and prospective Port cargo clients and discuss moving their cargoes through Port of San Francisco facilities.

Background:

The Breakbulk Americas Conference taking place in New Orleans September 23-26, 2013 is the largest and most important gathering in North America for companies involved in the shipping of heavy-lift, project cargo and traditional breakbulk cargoes, the cargo best suited for the Port of San Francisco's Pier 80. Breakbulk Americas is where shippers have the opportunity to meet and develop relationships with the leading specialized carriers, forwarders, ports, terminals and packers who have the expertise and resources to handle oversized cargoes with unique handling requirements.

THIS PRINT COVERS CALENDAR ITEM NO. 10A

Exhibitors include the world's major carriers, forwarders and ports (including the Port of San Francisco and Pier 80 terminal operator Metro Ports) that handle these specialized cargoes. In addition to a bustling exhibition floor, Breakbulk Americas will feature a 2-day conference with top speakers addressing industry issues. The in-depth program will delve into today's most pressing breakbulk transportation topics, and speakers will discuss the hottest regions for breakbulk and project cargo. Over 4,000 people will be in attendance.

The Port of San Francisco and Metro Ports will also be co-hosting a customer reception the evening of September 25, 2013 where current and prospective Port of San Francisco clients will be invited to meet, network and discuss business opportunities.

Recommendation:

Attached, for your approval, is a resolution authorizing Port Commissioner Willie Adams to travel to New Orleans with Port Maritime staff on September 23-26, 2013. This trip will give the Port Commissioner an opportunity to meet current and prospective Port cargo clients and discuss moving their cargoes through Port of San Francisco facilities. The cost of this trip is covered in the Port Commission's Fiscal Year 2013-2014 budget.

Prepared by:	Jim Maloney Maritime Marketing Manager
For:	Peter Dailey Deputy Director Maritime

**PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 13-28

- WHEREAS, The Port of San Francisco's Pier 80 cargo facility is recognized in the industry as one of the best in the country for moving heavy-lift, project cargo and traditional breakbulk cargoes; and
- WHEREAS, The Breakbulk Americas Conference taking place in New Orleans September 23-26, 2013 is the largest and most important gathering in North America for companies involved in the shipping of heavy-lift, project cargo and traditional breakbulk cargoes, the cargo best suited for the Port of San Francisco's Pier 80; and
- WHEREAS, Shippers have the opportunity to meet and develop relationships with the leading specialized carriers, forwarders, ports, terminals and packers who have the expertise and resources to handle oversized cargoes with unique handling requirements; and
- WHEREAS, The Port of San Francisco will have an exhibit booth at the conference's trade show and will co-host a customer reception with Metro Ports, both of which will facilitate meeting with current and prospective Port clients to discuss cargo business opportunities; and
- WHEREAS, Port staff requests approval for Commissioner Willie Adams to travel with representatives of the Maritime Division to New Orleans to attend the Breakbulk Americas Conference; and
- WHEREAS, The cost of this trip is covered in the Port's Fiscal Year 2013-2014 budget; now, therefore be it
- RESOLVED, That the Port Commission hereby approves this travel request.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of August 13, 2013.

Secretary



MEMORANDUM

August 8, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *M. Moyer*
Executive Director

SUBJECT: Request Authorization to Award Construction Contract No. 2761, Blue Greenway Signage Project, to Cal State Constructors, Inc., in the Amount of \$681,547, and authorization for a contract contingency fund of 10% of the contract amount (or \$68,155) for unanticipated contingencies for a total authorization of \$749,702

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

Overview

Port staff requests that the Port Commission authorize the award of construction Contract No. 2761, Blue Greenway Signage Project ("the Project", "the Blue Greenway") to Cal State Constructors, Inc. ("Cal State"), the lowest responsive, responsible bidder. The Project scope includes construction of 22-foot height signs at 10 locations along the Southern Waterfront between Mission Creek and Heron's Head Park. (Refer to the Project Site and Architectural Elevation Plans in Attachment A.)

Background

The Blue Greenway is a City and County of San Francisco project to improve and expand the public open space network along the City's central and southern waterfront, from China Basin Channel to the San Francisco southern county line. When fully completed in 2045 this network will consist of 13 miles of contiguous pedestrian and biking space plus a series of parks and respite areas at which to enjoy the Bay. The Blue Greenway's planning focus is to define how new parks and public spaces can be created to complement and connect with existing open spaces in the industrial and mixed use area.

THIS PRINT COVERS CALENDAR ITEM NO. 10B

Collectively, the Blue Greenway planning process is intended to define how San Francisco will carry out improvements to meet waterfront open space and recreational objectives set forth by the Ports Waterfront Land Use Plan and the City's General Plan, and to be consistent with the Association of Bay Area Governments (ABAG) San Francisco Bay Trail and Bay Area Water Trail Plans. Since approximately 30% of the Blue Greenway will lie on Port property, the Port expects to implement a significant amount of the improvements creating this network of public access, many of which are underway now as described below.

The City and County of San Francisco's 2008 Proposition A Clean and Safe Parks General Obligation Bond ("2008 GO Bond") provided the Port with funding to take a leadership role on advancing the Blue Greenway and to conduct a community planning process for the Blue Greenway. The Planning process included citywide inter-agency collaboration to ensure implementation of the Blue Greenway in a cohesive manner.

Blue Greenway Planning

The Blue Greenway alignment is within the jurisdiction of several City and State agencies , including: the Port, the San Francisco Office of Community Infrastructure and Investment (OCII) (formerly the Redevelopment Agency), the San Francisco Recreation and Parks Department (R&P), and the California State Parks Department. These agencies have worked cooperatively with the Port, the San Francisco Planning Department, Department of Public Works (DPW), Municipal Transportation Agency (MTA), and Mayor's Office to define locations for the network of Blue Greenway parks and improvements, including a contiguous pedestrian and bike access way, and to integrate these concepts in several different economic and land planning efforts underway in southeast San Francisco.

Because funding and implementation schedules of these efforts will not happen all at once, the key focus of the Blue Greenway planning process is to:

1. Identify the locations and uses of existing and new waterfront open spaces, and water access sites;
2. Define the key streets that provide access to and between these park and open space resources, along the north-south spine of the Blue Greenway as well as between inland neighborhoods and the waterfront and determine the appropriate street design;
3. Design and develop a signage system that establishes a clear identity for the Blue Greenway, and helps the public to navigate along the system;
4. Develop design guidelines that set standards for the type and style of furnishings and park signage, so that each provides common information and orientation while still allowing them to highlight their unique attributes and design opportunities;
5. Identify Port project cost and prioritize projects for immediate implementation based upon available funding and identify potential resources for future projects.

This staff report focuses on item #3 with the intent of placing signage along the contiguous pedestrian and bike access way, even before many of the parks are constructed, funded and built. However, as discussed below, the Port (with funding from two General

Obligation bond measures) is proceeding with several park projects along the Port's jurisdiction of the Blue Greenway.

Status of Port Blue Greenway Projects

To date the Port has constructed or is in the process of delivering, several Blue Greenway projects as identified in the Planning and Design Guidelines. Projects delivered include: Bayfront Park Shoreline and associated pathway, installation of an improved bikeway on Cargo Way and expansion of Heron's Head Park. Projects that have been bid and are ready to begin construction are the Pier 92 Grain Silo Public Art project and the Blue Greenway signage identifying the route.

Projects that are expected to be out to bid for construction this fall are the Bayview Gateway Open Space and Tulare Park. Projects that are in planning or early design include: Crane Cove Park at Pier 70, the Bayview Gateway Public Art, rehabilitation of the Copra Crane and removal of the Pier 82 Wharf Area. In addition, the 2012 Parks General Obligation Bond will fund design and improvements to Aqua Vista Park, Pier 70 Parks, Warm Water Cove Park and Islais Creek improvements. The Port expects to complete all Blue Greenway projects within its jurisdiction by 2035 with the first projects coming into fruition in the next 5 years.

Blue Greenway Signage

As noted above (item 3), one of the elements of the Blue Greenway Planning and Design guidelines is the development of a way-finding system along the Blue Greenway public access way. Unlike the Embarcadero promenade in the City's Northeastern waterfront, the alignment of the Blue Greenway is not obvious to the user; in many locations the Blue Greenway public alignment is far away from the Bay's edge or adjacent to heavy industrial uses and thus is somewhat obscured from potential users. In other locations sidewalks are sometimes narrow and non-existent and shoreline open spaces are separated by great distances. The Port, with assistance from a design team, developed a design for a way-finding system to (a) improve recognition of the system of open spaces and the alignment of the Blue Greenway even before it is completely designed, funded and built; (b) help build an identity to the system for today's users and potential users; and (c) through removable panels, allow for future area interpretation on the signs as the Blue Greenway evolves in the next 35 years.

The Port Commission, at its meeting on March 12, 2013, authorized staff to advertise for construction bids for the Project (Port Commission Resolution 13-05). To ensure a contract could be awarded with the available funding, the bid was structured with base bid items and one alternate bid item. The alternate bid item includes 2 spare sets of Blaze Sculpture and sign/map pylons. The Engineer's estimate for the base bid for this Project was \$780,000, and for the alternate was an additional \$70,000 for a combined total of \$850,000.

On June 6, 2013, Port staff received four bids for this Project. A summary of the bids is attached (see Attachment B, Bid Tabulation). Cal State is the lowest responsive,

responsible bidder, with a total bid price of \$681,547, which includes both the base bid and the alternate bid.

Local Business Enterprise

The Contract Monitoring Division ("CMD") staff has reviewed the project scope and established an 8% subcontracting goal for Local Business Enterprises (LBE), including small and micro LBEs.

CMD staff reviewed the bids and determined Cal State is responsive, pursuant to City Administrative Code Chapter 14B. Cal State's base bid includes Local Business Enterprise ("LBE") subcontractor participation of 16.75%, which satisfies the 8% subcontracting goal for LBEs, as recommended by the CMD. A copy of CMD memorandum is attached (see Attachment C, CMD Memorandum).

San Francisco Local Hiring Policy for Construction

The proposed contract will include the requirements to hire locally in accordance with the City's Local Hiring Ordinance (known as the San Francisco Local Hiring Policy for Construction), which became effective on March 25, 2011. The mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 25%, with a goal of no less than 10% of Project Work Hours within each trade to be performed by Disadvantaged Workers.

Regulatory Approvals

Port staff has secured all the required environmental and regulatory approvals for this Project.

Funding

A funding amount of \$1,458,000 is available from proceeds of the 2008 General Obligation Bonds issued to fund the Blue Greenway Signage Project.

The following is a breakdown of the estimated costs for this Project:

\$193,400	Creegan + D'Angelo Engineers, Engineering design and construction stage engineering services (approved and funded by prior Commission action)
\$681,547	Construction cost
<u>\$68,155</u>	<u>Project construction contingency (10% of construction cost)</u>
\$943,102	Total Estimated Cost for the Project

Schedule

The following is the anticipated Project schedule:

Commission Authorization to Award	August 13, 2013
Estimated Notice to Proceed (NTP)	September, 2013
Estimated Substantial Completion (240 Days)	May, 2014
Estimated Final Completion (60 Days)	July, 2014

Summary

Port staff recommends that the Port Commission authorize the award of construction Contract No. 2761, Blue Greenway Signage Project to Cal State Constructors, Inc., the lowest responsive, responsible bidder, in the amount of \$681,547, and further authorize staff to increase the contract amount, if needed for unanticipated contingencies, by an additional \$68,155 (or 10% of \$681,547) through contract modification or change order to a total maximum of \$749,702. Port staff also recommends that the Port Commission authorize the Executive Director to accept the work once it is complete.

Prepared by: Ken Chu, Project Engineer
David Beaupre, Project Planner

For: Uday Prasad, Interim Chief Harbor Engineer

Attachments:

- A - Site Plan
- B - Bid Tabulation
- C - CMD Memorandum

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 13-29

- WHEREAS, the Blue Greenway, upon completion, will be a contiguous network of public access for pedestrians and cyclist that will connect a multitude of parks and open spaces along San Francisco's southeastern shoreline and will connect property owned by multi-agencies including the Port of San Francisco; and
- WHEREAS, the Port Commission previously authorized the advertisement of the construction Contract No. 2761, Blue Greenway Signage Project ("Project") at its meeting on March 12, 2013 (Port Commission Resolution No. 13-05); and
- WHEREAS, Port staff received four bids for the Project on June 6, 2013; and
- WHEREAS, Port Engineering staff reviewed the bids and have determined that Cal State Constructors, Inc. ("Cal State") is the lowest responsive, responsible bidder with a total bid price of \$681,547, which includes base bid and the alternate bid item; and
- WHEREAS, the Project construction cost, including 10% contingency, plus design and engineering services, are within the available funds for the Project from the proceeds of the 2008 Parks General Obligation Bonds; and
- WHEREAS, Port staff has secured all the required environmental and regulatory approvals for this Project; and
- WHEREAS, The Contract Monitoring Division ("CMD") staff, formerly a part of the City Human Rights Commission (HRC), reviewed the bids and determined Cal State is responsive, under City Administrative Code Chapter 14B; and
- WHEREAS, the Project will include the requirements to hire locally in accordance with the City's Local Hiring Ordinance (also known as the San Francisco Local Hiring Policy for Construction, Section 6.22(G) of the City Administrative Code), which became effective on March 25, 2011; now, therefore be it
- RESOLVED, that the Port Commission hereby authorizes Port staff to award construction Contract No. 2761, Blue Greenway Signage Project to Cal State Constructors, Inc., the lowest responsive, responsible bidder, for the amount of \$681,547; and be it further

RESOLVED, that the Port Commission authorizes Port staff to increase the contract amount, if needed for unanticipated contingencies, by up to an additional \$68,155 (or 10% of \$681,547) through contract modification or change order for a total maximum of \$749,702; and be it further

RESOLVED, that the Port Commission hereby authorizes the Executive Director to accept the work once it is complete.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 13, 2013.

Secretary



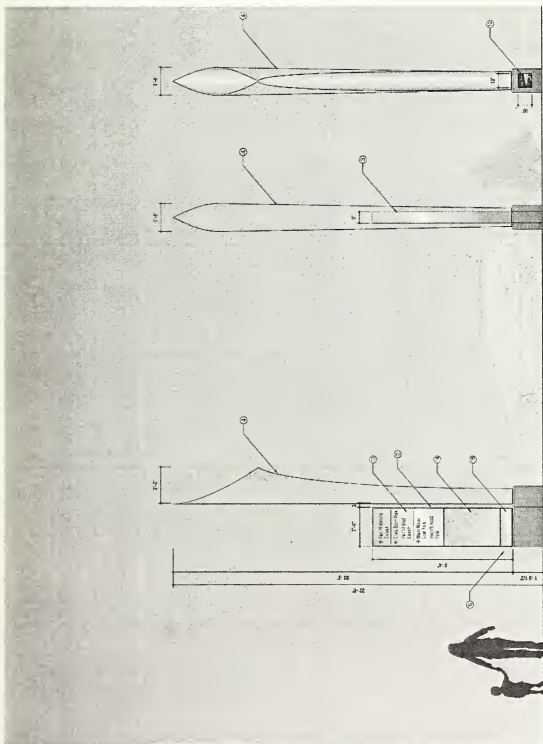
Creighton + D'Angelo
ARCHITECTS
1000 PINE STREET, SUITE 1000
CHICAGO, IL 60604



1000 Easting Avenue, Suite 100
 1000 Easting Avenue, Suite 100
 1000 Easting Avenue, Suite 100

KEY NOTES

- UNISH BUILD OVERLAPPING PLYON & CREATION MAR
WAY-PING PLYON IS DOUBLE SIDED
BLACK SAIL SCULPTURE
W' ALLUMINUM WITH PANEL WITH APPLIED WHITE BAY TAIL
LOGO GRAPHICS 4 COLORS PANEL TO BE INSET 1" INTO
HIC FEEL-STEEL
W' ALLUMINUM SIGNAGE PANEL, PAINT COLOR TIE WITH
APPLIED WHITE GRAPHICS
W' ALLUMINUM MAR PANEL, PAINT COLOR WITH CHART
APPLIED WHITE GRAPHICS, WRAP ALL EXPUSED EDGES
W' ALLUMINUM GRAPHICS PANEL, PAINT COLOR TIE



7 SIGNAGE ELEVATIONS

[illegible]



B I D T A B U L A T I O N

BID OPENING DATE	06/06/2013 IN PIER 1, SAN FRANCISCO
CONTRACT NUMBER	2761
PROJECT	BLIDE GREENWAY SIGNAGE

LBE GOAL: NUMBER OF BIDDERS:	8% 4	TOTAL NUMBER OF CALENDAR DAYS: ESTIMATE:	240 780,000	ANNOUNCED CONSTRUCTION BUDGET: LOW TOTAL BID PRICE:	944,000 (BASE BID + ALT) 681,547
--	-------------	--	--------------------	--	--

BIDDER #	ITEM #1	ITEM #2	ITEM #3	TOTAL BASE BID	ALT. #1	APPARENT BID RANK	BIDDER INFORMATION
1	29,000	587,547	10,000	626,547	55,000	1	CAL STATE CONSTRUCTORS, INC. 246 SECOND ST, STE 808 SAN FRANCISCO, CA 94105 PHN 415-536-9388 CSC@CSCCONSTRUCTORS.COM
2	35,793	785,400	10,000	831,193	98,000	3	L C GENERAL ENGINEERING & CONSTRUCTION, INC. 1596 HUDSON AVENUE SAN FRANCISCO, CA 94124 PHN 415-643-2888 MIRE@LCGENERAL.COM
3	35,000	800,000	10,000	845,000	55,000	2	SCHEMBRI CONSTRUCTION CO., INC. 1485 BAYSHORE BLVD., #130 SAN FRANCISCO, CA 94124 PHN 415-656-0300 CHARLES@SCHEMBRI.COM
4	50,000	1,183,000	10,000	1,323,000	80,000	4	GORDON N. BALL, INC. 333 CAMILLE AVE ALAMO, CA 94507 PHN 925-838-5675 ESTIMATING@BALLCONCO.COM

SUBCONTRACTOR LIST

[illegible]

SUBCONTRACTOR LIST

BIDDER NO.	NAME AND LOCATION	CERTIFIED LBE	DESCRIPTION OF PORTION OF WORK SUBCONTRACTED	AMOUNT
02	PRIORITY ARCHITECTURAL GRAPHICS	YES	SIGNAGE	94,167
	HILLSIDE DRILLING COMPANY, INC.	NO	DRILLING WORK	32,369
	KREYSLER & ASSOCIATES	NO	FABRICATE FRP "BLAZE" SAIL SCULPTURES & POLYMER CONCRETE PEDESTALS	407,174
	TOM'S METAL SPECIALISTS, INC. DBA TOM'S WELDING AND FABRICATION	YES	STRUCTURAL STEEL TUBE SIGNAGE FRAMING	43,450
TOTAL 02				577,160

SUBCONTRACTOR LIST

BIDDER NO.	NAME AND LOCATION	CERTIFIED LBS	DESCRIPTION OF PORTION OF WORK	AMOUNT
03	ON THE LEVEL CONCRETE	YES	SUBCONTRACTED	
	HILLSIDE DRILLING	NO	CONCRETE SIDEWALKS	80,000
	NUEVA CASTILLA	YES	CONCRETE PILES	36,000
	CORPORATE SIGN SYSTEMS	NO	MISCELLANEOUS METAL SUPPORTS	54,000
			SIGNS AND SAIL SCULPTURES	236,000
TOTAL 03				406 000

SUBCONTRACTOR LIST

[illegible]



Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator

GENERAL SERVICES AGENCY CONTRACT MONITORING DIVISION



Maria Cordero, Director

ATTACHMENT C

Date: June 26, 2012
To: Tim Leung
The Port Of San Francisco
From: Finbarr Jewell, CMD
Subject: Blue Greenway Signage, Contract Number 2761

The Contract Monitoring Division ("CMD") has evaluated the bids submitted for the above-referenced project for compliance with Chapter 14B pre-award requirements. An LBE subcontracting goal of 8% was established for the contract.

Four firms submitted bids for this contract. CMD reviewed the three lowest bids CAL State Constructors, INC., L.C. General Engineering & Construction, INC., and Schembri Construction Co., Inc. The three lowest bidders were all responsive to the 14B requirements.

Bidder	Base Bid	Bid Discount	Adjusted Bid	LBE
CA State Constructors	\$625,547	10%	\$563,892	16.75%
LC Engineering	\$831,193	10%	\$748,073	12.02%
Schembri Con.	\$845,000	10%	\$760,000	15.85%

Based upon its review, CMD hereby declares the three lowest responsive bidders to the Chapter 14B pre-award requirements. Should you have any questions, or if I can be of further assistance, please contact me at (415) 274-0511.

Finbarr Jewell
Contract Compliance Officer



MEMORANDUM

August 9, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Request authorization to enter into a one-year contract with the San Francisco Conservation Corps (SFCC) in the amount of \$285,000 to provide and administer the Port's Youth Employment Program

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution

EXECUTIVE SUMMARY

Since 2005 the Port has been contracting with local nonprofit organizations to provide San Francisco youth with paid work experience to help maintain Port property. The prior contract expired on June 30, 2012. A new Request for Proposals (RFP) was issued and a new contract was negotiated. Port staff requests Port Commission authorization to award a *one-year* contract to the San Francisco Conservation Corps (SFCC), a community-based nonprofit organization. Under the proposed contract, SFCC will manage a component of the Port's youth employment program¹ in coordination with the Port's Maintenance staff, to help maintain the Port's six park areas and public rights-of-way.

At the March 26, 2013 Port Commission meeting, Port staff requested authorization to enter into a contract with SFCC to operate and administer a component of the Port's Youth Employment Program. At that meeting the Port Commission expressed concerns about the terms of the proposed agreement. Specifically, the Port Commission's concerns were: 1) the percent of the budget supporting youth participant salaries, 2) performance metrics, 3) geographic representation and 4) contract term. The Port

THIS PRINT COVERS CALENDAR ITEM NO. 11A

¹ The Port sponsors a number of workforce development efforts targeted at youth and young adults including the proposed contract, a maritime internship program, AmeriCorps Interns at Heron's Head Park, Youth WORKS and Project Pull Internships, and various internship opportunities for college students.

Commission directed Port staff to work with the SFCC to revise the terms of the proposed agreement to address these concerns. This report has been updated to address the Port Commission's concerns and reflect the subsequent revisions to the proposed agreement. The updates to the report issued March 21, 2013 are shown here in italics.

BACKGROUND

On July 5, 2012, the Port Commission adopted Resolution No. 12-55, authorizing Port staff to issue an RFP to organize, implement, and administer a youth employment program to help maintain the Port's property. The program will provide up to ten economically disadvantaged and/or at risk San Francisco youth ages 16 through 24 with paid work experience to assist with property maintenance work, including weed abatement, hand watering and manual fertilization of Port plants, graffiti and litter removal. The selected contractor will recruit, hire, and provide work readiness training and supervision for the youth employees. Port staff will monitor the contractor to ensure performance of services in accordance with the contract.

The Office of Economic and Workforce Development (OEWD) will monitor the contract performance as a part of its citywide workforce development strategy. As such, the SFCC will submit regular monthly reports to OEWD documenting participant enrollment, progress, hours worked and goals for permanent employment or otherwise building a career.

Youth Employment Program Scope of Work

A. Program Participant Employment, Supervision and Training

The contract's scope of work includes all of the following tasks:

1. Employ economically disadvantaged and/or at risk San Francisco youth ages 16 through 24.
2. Maintain an ongoing workforce of up to ten youth employees ("Participants").
3. Assign work tasks defined by the Port to Participants. These include providing various maintenance services on Port property, as directed by Port staff, including weed abatement, hand watering and manual fertilization of Port plants, graffiti removal, and litter removal.
4. Provide work readiness training and supervision in environmental services to prepare Participants for future employment. This includes job seeking, interviewing, safety training, and basic language and literacy skill-building necessary to retain employment.
5. Inspect and verify the work being performed by Participants.
6. Record time, process payroll and distribute payments.
7. Monitor Participant performance (attendance, punctuality, work habits, etc.).
8. Provide back-up coverage for scheduled work when the scheduled Participant is not available.
9. Evaluate Participants (every month and/or when leaving the Program).
10. Initiate, document, and complete disciplinary actions, including dismissals.

11. Provide any needed transportation for Participants to and from work sites.
12. Provide tools and other basic equipment (including vehicles).
13. Collect any tools, equipment, and supplies, if provided by the Port, when Participants leave the Program, as applicable.
14. Identify and resolve worker safety issues. Facilitate resolution of job-related injuries in accordance with CAL-OSHA regulations.
15. Receive, investigate and resolve complaints regarding the Port's Youth Employment Program.

B. Program Staffing

The contract requires the following staffing by SFCC for the Port's Youth Employment Program:

1. Employ at least one (1) Program Coordinator to oversee Program services.
2. Supervise Participants in day-to-day work by staffing the Program with two first-line Program supervisors.

C. Program Communications

The contract requires the following reporting by SFCC to the Port of the Youth Employment Program:

1. Establish and maintain an effective working relationship with the Port liaison.
2. Consult regularly with Port staff to identify and avoid potential hazards in work environments.
3. Attend required monthly status meetings with Port staff.
4. Provide monthly written reports to the Port (number of Participants per week, supplies issued and used, training and learning successes, and complaints received and resolved, etc.).

SELECTION PROCESS

The Port issued the RFP on December 20, 2012. Port staff sent announcements via the Board of Supervisors' outreach list, which includes 12 local newspapers² and to the firms recommended by the Contract Monitoring Division as certified Local Business Enterprises. The RFP was posted on the Port's and the Office of Contract Administration's websites. Two firms showed interest online and one attended the pre-proposal conference held on January 8, 2013. On January 29, 2013 the Port received one proposal from the San Francisco Conservation Corps (SFCC) with Larkin Street Youth Services as a subcontractor. Port and Contract Monitoring Division staff reviewed the proposal and determined that it was responsive to the RFP and was eligible for evaluation.

² Advertisements were placed in the following local newspapers: *The San Francisco Bay View*, *Small Business Exchange*, *Sing Tao Daily*, *World Journal*, *El Mensajero*, *El Reportero*, *Bay Area Reporter*, *Potrero View*, *Central City Extra*, *Marina Times/Northside*, *West Portal Monthly*, and the *Western Edition* (Quarterly).

The Port convened an evaluation panel on February 28, 2013 to evaluate and score the proposal based upon the evaluation criteria published in the RFP. The three-person evaluation panel consisted of a Case Manager from the Human Services Agency, Workforce Development Division, an Assistant Superintendent from the Department of Public Works, and a Maintenance Manager from the Recreation and Parks Department. The panel evaluated the proposal based on: qualifications of program staff; understanding of the Port's proposed youth employment program; the organization's recent youth employment program experience; workload and staff availability; outreach and approach to identify economically disadvantaged and/or at risk youth; and the organization's policies to manage participants.

There were two phases of evaluation: (1) a written proposal evaluation process and (2) an oral interview evaluation with reference checks. Port staff completed reference checks prior to the oral interview.

RFP Evaluation Highlights

SFCC, with its proposed subcontractor partner, Larkin Street Youth Services (Larkin), was the only Proposer. SFCC's purpose is to help young people safely and successfully transition to adulthood as employees, students, family members, and community members. SFCC has grown from a program offering work readiness training and basic education, serving 24 youth each year, to a comprehensive program serving over 125 young people annually. SFCC's mission statement is: "SFCC offers young people opportunities to develop themselves, their academic abilities and marketable job skills while addressing community needs through service work." SFCC's clientele are predominantly extremely low-income males and females with a maximum age of 24 years. The program serves 80% African American and Latino youth, 10% of which have been in foster care and 35% of which have had contact with the criminal justice system. The average grade level skill for math and reading upon entry is the 5th grade. Approximately one-third of SFCC's clients have children of their own.

The subcontractor, Larkin, is a nonprofit organization that was founded in 1984 to address the needs of homeless youth in San Francisco. Larkin's mission is to create a continuum of services that inspire youth to move beyond the street. Larkin will nurture potential, promote dignity, and support bold steps by all. Larkin's clientele is 100% homeless, 80% of whom were formerly in foster care and all of whom are consider "at risk". The majority of clientele are males aged 16-19 years old. They are predominantly African American, Latino and mixed race youth and one-third have had contact with the criminal justice system.

The Proposer received a panel average of 82 out of 100 possible points combining the written proposal, the oral interview and reference check scores. The evaluation criteria and breakdown of the scores are attached as Exhibit 1, Youth Employment Scoring Matrix. Per City professional services contracting guidelines, an acceptable average score to advance to a short-list for interviews or for contract negotiations is considered to be at or above 70 out of 100 points. Following the written proposal evaluation, the following were assessed as the Proposer's strengths and weaknesses:

Proposer's Strengths:

- Demonstrated breadth, depth and history of both organization and staff experience in youth employment programs
- Clear, detailed program implementation timeline
- Clear structure for partnering with a nonprofit organization
- Clear approach to coordinating program with the Port
- Proven track record of successful partnering with the Port and other City agencies
- Number one source of recruitment referrals comes from program alumni

Proposer's Weaknesses:

- Proposal lacked detail on workload and availability of field level supervisors
- Proposal lacked some detail on Program design, including oversight and program outcome measurement methods

Based on the Proposer's weaknesses assessed during the written proposal evaluation phase, the panel requested additional details during the interview *including the amount of time field supervisors would be with the participants and program scope details*. The Proposer addressed the weaknesses in the written proposal by *clarifying that a field supervisor would be with the youth at all times when working on Port property and by providing additional details on program design and scope*. After the scores were finalized and averaged, the evaluation panel recommended proceeding with selecting SFCC without reservation.

Youth Recruitment and Outreach

SFCC uses a network of sources for outreach and recruitment referrals. These include the San Francisco Housing Authority, Access Points/One-Stop Centers, Bridge Housing, and their program alumni. SFCC reports that their most effective recruitment sources are current SFCC members and program graduates.

Statistics on Youth Served by Neighborhood

At its March 2013 meeting, the Port Commission requested a breakdown of program participants by neighborhood. SFCC provided the following breakdown of 2012 program participants. Since Larkin clients are homeless youth and do not have permanent addresses, Larkin was not able to provide this data. Larkin was able to provide a breakdown of the demographics of their clients, which is presented in Exhibit 3.

Table 1: Youth Served by Neighborhood in 2012

	SFCC	
<i>Bayview Hunters Point</i>	<i>55</i>	<i>40%</i>
<i>Visitacion Valley</i>	<i>23</i>	<i>17%</i>
<i>Potrero Hill</i>	<i>17</i>	<i>12%</i>
<i>SOMA</i>	<i>11</i>	<i>8%</i>
<i>Western Addition</i>	<i>11</i>	<i>8%</i>
<i>Mission</i>	<i>8</i>	<i>6%</i>
<i>Excelsior</i>	<i>7</i>	<i>5%</i>
<i>Haight Ashbury</i>	<i>3</i>	<i>2%</i>
<i>Tenderloin</i>	<i>3</i>	<i>2%</i>
<i>Total:</i>	<i>138</i>	<i>100%</i>

Success Stories

Port staff requested examples of success stories and SFCC provided the following:

The program includes a 21 year-old woman whose immigrant mother only speaks Cambodian. One of seven siblings, this SFCC member had a history of poor school attendance and reported finding school discouraging. Since coming to the program she has been able to work her way up to crew leader, a position that requires the candidate to go through a rigorous hiring process including preparing a resume, cover letter and two references. Once this SFCC member receives her high school diploma, she would like to become a pharmacist.

A second example is an African American male, who resides in Visitacion Valley and who has graduated from the program. As a high school dropout, he was not actively looking for work prior to joining the SFCC. Once in the program, he found that he enjoyed learning and was actively pursuing completing his high school diploma. After completing the program, he was able to secure a job with the City as a custodian.

The Director of the Port's Maintenance Division reports that in prior years, the crews from SFCC and Larkin were a welcome supplement to the Port's small gardening staff. Their crews are able to provide a significant staffing resource on a targeted basis to address specific tasks. Some examples of the jobs performed by the SFCC and Larkin include cutting weeds and fennel growing along roadways and in open areas that spout up each spring. If not cut back, these materials constitute a significant fire hazard later in the year as they dry out in the summer. The Port also employed SFCC and Larkin youth to clean up along the Central and Southern waterfront, in preparation for baseball season. Finally, the Port employed SFCC youth to train both Port staff and Fishermen's Wharf workers on properly separating compostable waste from trash and recyclables.

PROPOSED ADDITION OF A SUBCONTRACTOR

To partner with a Bayview-Hunters Point based provider, SFCC proposes to add a subcontractor, the A. Philip Randolph Institute of San Francisco (APRI). SFCC states that this qualified local nonprofit would perform substantially similar services to Larkin. Port staff has reviewed information about this nonprofit and concurs with SFCC that adding APRI would strengthen nonprofit partnerships and the geographic location of this nonprofit may result in reaching more at risk youth from the Bayview-Hunters Point community.

APRI has served residents of San Francisco, particularly in the Bayview-Hunters Point community since 1994. The organization's mission is to support racial equality and economic justice and to advocate for disadvantaged communities through community engagement and civic participation. The Youth Chapter of APRI aims to advance the academic, collegiate and employment needs of youth. This chapter is committed to the success of youth through community service, positive social activities and internship opportunities. Program services offered are targeted to address the needs of low-income families. Services are intended to address the multiple barriers young adults and adults face while attempting to secure employment.

CONTRACT TERMS

Port staff proposes awarding a one-year contract for an amount not to exceed \$285,000 with a term of August 2013 to August 2014 to SFCC. Port staff proposes starting a new RFP process for youth employment in October of 2013 so that a new contract can be in place by September of 2014. Port staff is recommending a limited one-year term for the SFCC contract to ensure continuity of the youth employment program, including gardening services and opportunities for youth while the new RFP process is completed for a longer term agreement. Issuance of a new RFP with broader outreach will ensure that new providers that have entered the market and local nonprofits that indicated they were not aware of the original RFP are eligible to compete for the longer-term contract.

The table below presents the original and revised proposed annual contract budget broken down between the SFCC and Larkin. Staff presented the original budget to the Port Commission in March of 2013. It also details the allocation of funds between program participant and field supervision salaries, program management salaries, operating expenses, and indirect costs.

Table 2 - SFCC's Proposed Revised Annual Budget

	Original				New				Change	
	SFCC	LSYS	Total	%	SFCC	LSYS	APRI	Total		
Direct Salary and Fringe Expenses										
Youth	49,705	46,200	95,905	36%	73,847	32,132	10,376	116,355	41%	20,450 21%
Field Supervisors	20,584	17,080	37,664	14%	33,886	10,213	4,416	48,515	17%	10,851 29%
Subtotal: Salary & Fringe	70,289	63,280	133,569	50%	107,733	42,345	14,792	164,870	58%	31,301 23%
Allocated Management & Operating Costs										
Project Management & Admin.										
Salary & Fringe	44,967	24,327	69,294	26%	29,378	24,327	2,767	56,472	20%	(12,822) -19%
Operating Expenses	17,244	6,198	23,442	9%	25,689	6,055	623	32,367	11%	8,925 38%
Subtotal: Allocated Expense	62,211	30,525	92,736	35%	55,067	30,382	3,390	88,839	31%	(3,897) -4%
Indirect Costs*	26,500	12,195	38,695	15%	22,200	7,273	1,818	31,291	11%	(7,404) -19%
Total	159,000	106,000	265,000		185,000	80,000	20,000	285,000		20,000 8%

*Indirect costs include a pro rata share of agency staff cost, including the Executive Director, Finance Director, HR and Payroll staff, as well as the associated operating expenses.

Youth Salaries

The revised proposal increases funds for youth salaries by 21%, reduces allocated administrative costs by 4% and indirect costs by 19%. This was accomplished by increasing the amount of youth participant service hours to the Port from 6,800 to 7,400 (or 8%) for SCFF and Larkin and by adding APRI. It should be noted that the new proposal reduces the Larkin portion of the contract from 40% to 30%, though this still represents an increase from the 20% share that Larkin received in the last contract.

Indirect Costs

Port staff reviewed several Controller's Office prepared reports regarding cost allocation practices for contracts with nonprofit organizations. The City does not have a set methodology for determining indirect costs, nor is there a standard citywide rate for indirect costs for nonprofit contractors. Indirect costs are reviewed on a contract-by-contract basis and the analysis is based on the nature of the work and the size of the nonprofit organization. Port staff reviewed contracts that SFCC has with other City agencies to determine if the proposed percent allocated to indirect costs is consistent with other City agreements. Staff was able to find two recent contracts, one with the Water Department and the other with the OEWD. The findings are as follows:

Water Department Contract

The Water Department's youth employment contract is for the provision of landscaping services and is similar to the Port's program. The Water Department's agreement does not include a breakdown of costs by category; rather the Water Department is paying the SFCC an hourly rate of \$41.00, inclusive of all direct and indirect costs. In comparison, the rate under the Port's proposed agreement is \$37.00 per labor hour for SFCC and \$33.33 for Larkin, or a combined rate of \$35.81 per hour. These rates include all program costs including indirect costs.

OEWD Contract

The OEWD contract was for provision of Job Readiness training and did not include

youth participants; therefore, it is not directly comparable to the Port's program. OEWD staff did provide the Port with a copy of the approved budget. The overhead/indirect rate for this contract was 13%. In comparison, the revised budget for the proposed agreement between the Port and SFCC limits indirect costs to 11% of the total budget.

Port staff was also able, with the assistance of the City's Department of Children, Youth & Their Families (DCYF), to review three other youth employment programs run by San Francisco based nonprofits that serve similar youth populations.

- New Door Ventures - NDV Youth Workforce Development for Justice System Involved Youth Strategy
- Lavender Youth Recreation and Information Center (LYRIC) - Sequoia Leadership Institute for LGBTQQ and Ally Youth
- Horizons Unlimited of San Francisco, Inc. - LifeWorks Employment Program

Program descriptions of these three youth employment programs are presented in Exhibit 4.

The table below summarizes and compares the SFCC/LSYC budget to these three local youth employment programs listed above.

	SFCC Partnership		New Door Ventures		LYRIC		Horizons Unlimited	
Direct Costs								
Corp Members								
Salary & Fringe	116,355	41%	64,734	27%	61,136	25%	91,296	37%
Field Supervisors								
Salary & Fringe	<u>48,515</u>	17%	<u>-</u>	0%	<u>-</u>	0%	<u>-</u>	0%
Subtotal: Salary & Fringe	<u>164,870</u>	58%	<u>64,734</u>	27%	<u>61,136</u>	25%	<u>91,296</u>	37%
Allocated Management & Operating Costs								
Project Management & Admin.								
Salary & Fringe	56,472	20%	135,170	57%	116,083	48%	97,039	39%
Operating Expenses	<u>32,367</u>	11%	<u>11,151</u>	5%	<u>31,477</u>	13%	<u>24,165</u>	10%
Subtotal: Allocated Expense	<u>88,839</u>	31%	<u>146,321</u>	61%	<u>147,560</u>	61%	<u>121,204</u>	48%
Indirect Costs*	31,291	11%	26,945	11%	31,304	13%	37,500	15%
Total	285,000		238,000		240,000		250,000	

*Indirect costs include a pro rata share of agency staff cost, including the Executive Director, Finance Director, HR and Payroll staff, as well as the associated operating expenses.

As indicated in the table above, the proposed SFCC contract will dedicate a higher portion of the contract fees to salaries of the youth and supervisors and a lower portion to administrative and indirect costs than other equivalent City contracts.

Performance Metrics

Port staff and SFCC have jointly developed a set of performance metrics that will be tracked on an annual basis. Port staff will examine performance quarterly. These

metrics track a number of outcomes primarily focused on the youth served by the program, including the number of youth served, the neighborhoods in which the youth reside, and the educational and employment development accomplishments of the participants. The complete set of performance metrics is included in Exhibit 2, attached to this report.

Summary

The *third-party* evaluation panel has recommended that the contract be awarded to the San Francisco Conservation Corps with its subcontractor partner, Larkin Street Youth Services in accordance with published RFP evaluation criteria and consistent with the City's standard professional services contract solicitation and selection procedures. *Port staff supports SFCC's request to add A. Philip Randolph Institute as an additional subcontractor and community partner.*

Weaknesses in the San Francisco Conservation Corps' written proposal, related to a few areas lacking detail, were deemed by the evaluation panel to be appropriately addressed by the Proposer during the oral interview *as discussed above.*

Port staff recommends that the Port Commission authorize the award of a *contract for one year* in the amount of \$285,000 to the San Francisco Conservation Corps to administer a youth employment program to help maintain the Port's property. *Port staff proposes to begin a new RFP for youth employment to expand outreach efforts and will return to the Port Commission in October of 2013 to request permission to advertise.*

Prepared by: Andrés Acevedo, Contracts Manager

For: Tom Carter, Deputy Director
Maintenance

Elaine Forbes, Deputy Director
Finance and Administration

Attachments:

- | | |
|------------|---|
| Exhibit 1: | Youth Employment RFP Scoring Matrix |
| Exhibit 2: | Performance Metrics |
| Exhibit 3: | Youth Served Demographic Information |
| Exhibit 4 | Comparative Youth Employment Program Descriptions |

Exhibit 1
Youth Employment RFP Scoring Matrix

Phase 1: Written Proposal Evaluation Criteria	Possible Points	Panel Average Score
Firm and Program Staff Qualifications		
A. Breadth, depth, and clarity of Firm History, Organizational Structure and youth employment program experience based on client list	10	10
B. Adequacy and clarity of Program staffing structure, staff experience, education, roles, responsibilities, workload and availability	25	17
Program Approach		
C. Adequacy and clarity of Program design to meet Program Goals (RFP Section 2.1) and Program Scope (RFP Section 2.2)	20	13
D. Adequacy and clarity of approach to partnering with San Francisco based nonprofit organizations	10	10
E. Adequacy and clarity of Program timeline	5	5
F. Adequacy and clarity of recruitment resources and methods	10	8
G. Adequacy and clarity of Program oversight methods	5	3
H. Adequacy and clarity of Program performance and outcomes measurement methods	10	8
I. Adequacy and clarity of Program coordination with City	5	5
TOTAL for Phase 1, Written Proposal Evaluation	100	79
Phase 2: Oral Interview Evaluation Criteria and Reference Checks	Possible Points	Panel Average Score
Firm and Program Staff Qualifications		
A. Introduce your organization and describe each team member's proposed role in the Port's program. Summarize why you would be the best team for the program.	20	19
Program Approach		
B. How will your program develop transferable work readiness skills for the participants?	15	9
C. How will you conduct outreach to identify economically disadvantaged and/or at risk youth to participate in the program?	10	10
D. How do you evaluate day-to-day performance of both the participants and your staff?	10	9
E. How do you evaluate the long-term benefits of the program participants?	10	8
F. Situational Question: If two of the participants constantly showed up late for work, how would you address the issue?	10	10
G. Situational Question: One of your participants and a Port staff member has a disagreement. Describe the steps your organization would take to resolve the situation.	10	8
Reference checks (Completed by Port Staff)	15	15
TOTAL for Phase 2, Oral Interview and Reference Checks	100	85

Exhibit 2 Performance Metrics

Port of SF Performance Metrics 2013-2014								
Performance Measures	Targets	Q 1	Q 2	Q 3	Q 4		% Toward Target	Totals
Program Administration								
SFOC & LSYS # of Youth working on Port of SF's Environmental Program	36							
LSYS # of 16-17 years olds	6							
SFOC # of 18-24 year olds	30							
SFOC & LSYS # of workplace accidents	0							
Education and Career								
SFOC & LSYS 80% of youth will be enrolled in GED or High School	29							
SFOC 50% of enrolled Youth will obtained their GED or High School Diploma	15							
SFOC 75% of Youth who have completed their career development portfolios	22							
SFOC 85% of Youth who have successfully completed 8 months with a positive exit obtained employment, enrolled in post-secondary education and/or advanced training programs	19							
Worksite Information								
SFOC & LSYS Youth hours implemented								
SFOC & LSYS Tailgate Safety Sessions conducted	30							
Project sites implemented	TBD							
Youth Population Served								
SFOC 30% of the participants will reside in the Southeast neighborhoods of San Francisco	11							
SFOC 90% of participants will be youth who were identified as "at risk" Youth	32							
Neighborhoods								
	Bayview	Tenderloin	Mission	Vis Valley	Rincon Hill	Western Add	Other	Total
SFOC & LSYS # of youth served								
SFOC & LSYS % of youth served in Target Neighborhoods								

Exhibit 3
Youths Served 2012 Demographic Information

San Francisco Conservation Corps

Age 100% 18 – 24 years old

Gender

- 60% Male
- 40% Female

Ethnicity/Race

- African American: 54%
- Latino: 27%
- Asian Pacific Islander: 15%
- White: 1%
- Other: 3%

Average Grade Level (Skills) upon Entry: 5th Grade reading and math

Public Assistance: 28%

Formerly in Foster Care System: 10%

Contact with Criminal Justice System: 35%

Extremely Low Income: 85%

Low-Income: 15%

Have one or more children: 32%

Larkin Street Youth Services

Age: 100% 16-19 years old

Gender:

- Male 60%
- Female 37%
- Transgender 3%

Ethnicity /Race:

- African American 38%
- American Indian less than 1%
- Asian/Pacific Islander 4%
- Latino/a 19%
- Multiracial 12%

- White/Caucasian 22%
- Other/decline to state 4%

Formerly in Foster Care System: 80%

Contact with Criminal Justice System: 30%

Homeless: 100%

Considered "at risk": 100%

Exhibit 4

Comparative Youth Employment Program Descriptions

Name	Program Description
New Door Ventures - NDV Youth Workforce Development for Justice System Involved Youth	New Door Ventures' mission is to prepare at risk youth for work and life. We provide skill-building opportunities, individual support and paid jobs that enable our youth to discover and achieve their potential. Our work is integral to their successful transition to healthy, sustainable adulthood. We aim to transform individuals who will in turn transform their communities. Our Program Model takes a positive youth development approach and has four core components: paid job internships, skill-building workshops, 1-on-1 case management, and educational supports. These program components are mostly delivered Monday through Friday from 9am to 8pm.
Lavender Youth Recreation and Information Center (LYRIC) - Sequoia Leadership Institute for LGBTQQ and Ally Youth	The Sequoia Leadership Institute (SLI) provides a continuum of work-based learning opportunities for our target population of low-income lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQQ) youth of color. Through a culturally relevant training curriculum, sequenced skill-building activities, and intentional mentorship, SLI provides youth with the knowledge, skills, abilities, and experiences that will prepare them for the world of work. Four cohorts and held annually (Fall, Winter, Spring, Summer); youth work approximately 10 hours per week and are paid \$11 per hour. Program hours vary by season.
Horizons Unlimited of San Francisco, Inc. - LifeWorks Employment Program	LifeWorks Employment Program is a youth workforce development program that provides job readiness, life skills, career exploration, academic support, educational/post-secondary planning and preparation, and work experience for youth, ages of 14-21, involved with the juvenile justice system and/or with barriers to employment. The program consists of 2 cohorts, LifeWorks (ages 14-17) and TAY (Transitional Age Youth) (ages 18-21) and is offered year round: Summer (8 weeks, 20 hrs/wk) and Fall (30 weeks, 10 hrs/wk.).

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 13-30**

- WHEREAS, the Port Commission, at its regular meeting of July 5, 2013 adopted Resolution No. 12-55, authorizing Port staff to issue a Request for Proposals to organize, implement, and administer a youth employment program to help maintain the Port's property; and
- WHEREAS, On January 29, 2013, the Port received one proposal in response to the Request for Proposals ("RFP") from the San Francisco Conservation Corps, a 501(C) (3) nonprofit organization; and
- WHEREAS, Port staff, aided by a third-party review panel, completed a review of the RFP response and determined that this sole proposal from the San Francisco Conservation Corps, was responsive to the RFP; and
- WHEREAS, Port staff recommend award of the contract to the San Francisco Conservation Corps to administer the Port's youth employment program for one year; and
- WHEREAS, the Port has allocated \$265,000 from its operating budget for fiscal year 2013-14 to fund this program and will carry forward \$20,000 from its fiscal year 2012-13 allocation, for a total of \$285,000; now, therefore be it
- RESOLVED that the Port Commission hereby authorizes staff to execute a contract with the San Francisco Conservation Corps to provide and administer a youth employment program to help maintain the Port's property in the total amount of \$285,000.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of August 13, 2013.

Secretary



MEMORANDUM

August 8, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *M Moyer*
Executive Director

SUBJECT: Informational presentation on the Port of San Francisco's Leasing Practices

DIRECTOR'S RECOMMENDATION: Informational Item – No Action Required

Executive Summary

From time to time, the Port Commissioners have inquired about the Port's leasing processes, public outreach for leasing opportunities, methodology for making leasing decisions and type of reports available regarding the Port's portfolio and its performance. The following synopsis strives to answer those questions and further describe policies and procedures related to the Port's leasing process and management of the portfolio.

Background

The Port of San Francisco is one of the most diverse ports in the nation. The Port manages 7½ miles of waterfront property consisting of a seawall, 39 pile-supported structures, 80 substructures (including both piers and marginal wharves between piers), 245 commercial and industrial buildings, over 3 miles of streets and sidewalks, miles of utility infrastructure and other assets such as drydocks, cargo cranes and railroad track.

Facilities • The Port's Real Estate portfolio accounts for approximately 21 million square feet of the Port's assets. The Port's Maritime, Maintenance and Engineering Division Divisions manage the remainder of the property, most of which is public space and/or

THIS PRINT COVERS CALENDAR ITEM NO. 12A

infrastructure (utility, transportation, marginal wharves) and does not generate revenue. Commercial operations include restaurants, retail shopping, professional sports, diverse maritime operations and regional transportation facilities. The Real Estate Division's portfolio is broken out as follows:

Table 1: Port Real Estate properties by Use Type

Type	Sq. Ft.	Acres	% of Total
Office and Bulkhead Office	320,000	7.3	1.5%
Shed	1,800,000	41.3	8.5%
Restaurant	190,000	4.4	0.9%
Retail	60,000	1.4	0.3%
Parking	990,000	22.7	4.7%
Land	11,810,000	271.1	55.9%
Subtotal Direct Management	15,170,000	348.3	71.9%
Ground Leases	5,940,000	136.4	28.1%
Total	**21,110,000	484.6	100.0%

******This analysis shows the primary categories of space which are leasable by the Real Estate Division (and therefore includes leased and vacant space). The rent roll only shows spaces which are leased. This analysis also does not include water, aprons, berths, underwater space (such as the Transbay Cable). All properties under agreement with the Port are reported on the rent-roll.

As delineated above, the Port has a very diverse portfolio of both real estate properties and users, making the Port an attractive landlord and giving it economic diversity. However, this diversity in facilities also presents management challenges as the needs of our tenants require a broad span of knowledge and resources.

Staffing • The Real Estate Division is comprised of 20 full time staff and one part time employee. The Real Estate Division currently manages 557 agreements (some of which include leases with Maritime users managed by the Real Estate Division), representing 25.5 million square feet (see Table 1 above) with annual revenues totaling just over \$54 million. New leases are primarily negotiated by one Leasing Manager who

covers the entire waterfront area with the assistance of the property managers and/or the senior property managers and/or the Assistant Deputy Director. Renewals are handled by the six property managers, one of whom focuses solely on renewals in the Northern Waterfront. In the next 12 months approximately 60 property agreements are coming up for renewal, most of which will be handled by the Port's six Property Managers at an average of 10 per Property Manager. Each Property Manager also manages an average of 100 tenants. In comparison, property managers in the private sector typically manage 25 to 30 tenants and often do not have the added renewal/leasing responsibilities of Port Property Managers. The Port Leasing Manager and Property Managers strive to provide timely customer service, returning all telephone calls and e-mail inquiries within one business day.

The City's Department of Real Estate manages 60 buildings (4 million sq. ft.) representing 220 tenants with seven property managers. This equates to 34 tenants per property manager. The Airport also employs eight property managers to manage 250 commercial agreements (62 leases per property manager). The Airport employs an additional seven property managers to manage 200 aviation agreements (28 leases per managers).

In addition to the leasing and renewal functions of the Port property managers, there are numerous other activities that require their time and attention, for example: (i) addressing facility maintenance issues and working with the Port's Maintenance Division to schedule and complete projects, (ii) general tenant relations, (iii) facilitating project management of building improvements in coordination with tenants for tenant improvement work, (iv) reviewing tenant's permit applications for conformance with the lease, and (v) facilitating other community projects that do not translate into a lease or revenue, such as the Port's Street Performer Program, Jefferson Street Public Realm project, the Pier 43 ½ Promenade, the Pier 96 improvements.

Real Estate is also responsible for much of the Port's Environmental stewardship. Each lease requires environmental review and every premise receives an inspection at both the time of tenant move in and move out. Large projects require a workplan which needs review and mitigation standards set. The two staff members assigned also respond to any water leaks, sewer leaks and hazardous materials spills. They are responsible for reporting some of these activities to State regulatory agencies. A new position, titled Port Asset Manager, has been added to the Real Estate Division in the FY 2013-14 budget. The new Asset Manager will advise the Division on strategic real estate leasing, improvements and positioning of the Port's real estate portfolio. The Asset Manager will work closely with the property managers, leasing manager, and Deputy Directors who handle the day-to-day operations of the properties and who work most directly with the tenants, processing lease applications, tenant requests, terminations and defaults. The Asset Manager will work with the Real Estate management team to devise strategies for targeting certain industries/tenants and will closely monitor market trends, participate in a broad network of real estate market makers and advise the Division on how best to implement new market opportunities and practices.



Additionally, if resources allow and if approved by the Port Commission, Mayor and Board of Supervisors, Port staff will seek to add an additional Property Manager to the FY 2014-15 budget. To bring the obligations of the Port's Property Managers in line with the private sector, the Port would need to triple or quadruple the number of property managers from the current 6 to 22. However, it has been difficult for the Port to maintain stable operating revenues to support this level of staffing and historically all of the Port Divisions are understaffed.

Professional Resources • The Port's Assistant Deputy Director, one of the Senior Property Managers and two of the Property Managers hold California Brokers Licenses and two Property Managers hold California Real Estate Sales Licenses. The Property Managers keep their Licenses current which benefits the Real Estate Division by ensuring that its Property Managers' professional experience has current market relevancy. They maintain knowledge of market trends and share this information with other staff. Additionally, staff employs BOMA (Building Owners and Managers Association) and IREM (Institute of Real Estate Management) as resources for keeping up with current market trends and best practices. The Leasing Manager maintains ongoing dialog with real estate management and reporting agencies, (i.e. CB Richard Ellis, Cassidy Turley) to maintain current commercial market trends. In addition, the new Asset Manager also will have responsibility for the Port's relationships with market makers and will leverage those relationships to help ensure that the Port is implementing the most current market techniques and practices.

Average Volume • In FY 2012-2013 the Real Estate Department executed 72 new leases/licenses, relocations and renewals of existing leases. These 72 leases/licenses have an aggregate revenue value of \$3,064,990 annually and represent 5,488,410 sq. feet. The majority of this square footage (2.6 million sq. ft.) represents facilities under agreement with the America's Cup Event Authority and therefore have no associated dollar value. The remaining renewals were negotiated at or above the approved parameter rents for the type of premises which range from \$.25 for raw land to \$2.90 for improved office in the northern waterfront.

In addition to the 72 leases, the Port also licensed 42 special events in fiscal year 2012-2013. Special events include marathons and walks along the Embarcadero, events at AT&T Park (i.e., Soccer, American Idol Auditions, Cirque du Soleil), Delancey Street Christmas Tree Lot, Fleet Week, 4th of July Celebrations and the New Year's Eve Fireworks.

Overview of the Leasing Process

In 1993, the Port Commission authorized staff to complete license and lease transactions that follow the Port's preapproved standard terms and annually approved parameter rents (Resolution No. 93-127).

Over the years, Real Estate staff has created and the Port Commission has pre-approved four boiler plate leases, originally approved by the Port Commission, that standardize Port lease terms such as insurance requirements, rent escalation and rent

Additionally, if resources allow and if approved by the Port Commission, Mayor and Board of Supervisors, Port staff will seek to add an additional Property Manager to the FY 2014-15 budget. To bring the obligations of the Port's Property Managers in line with the private sector, the Port would need to triple or quadruple the number of property managers from the current 6 to 22. However, it has been difficult for the Port to maintain stable operating revenues to support this level of staffing and historically all of the Port Divisions are understaffed.

Professional Resources • The Port's Assistant Deputy Director, one of the Senior Property Managers and two of the Property Managers hold California Brokers Licenses and two Property Managers hold California Real Estate Sales Licenses. The Property Managers keep their Licenses current which benefits the Real Estate Division by ensuring that its Property Managers' professional experience has current market relevancy. They maintain knowledge of market trends and share this information with other staff. Additionally, staff employs BOMA (Building Owners and Managers Association) and IREM (Institute of Real Estate Management) as resources for keeping up with current market trends and best practices. The Leasing Manager maintains ongoing dialog with real estate management and reporting agencies, (i.e. CB Richard Ellis, Cassidy Turley) to maintain current commercial market trends. In addition, the new Asset Manager also will have responsibility for the Port's relationships with market makers and will leverage those relationships to help ensure that the Port is implementing the most current market techniques and practices.

Average Volume • In FY 2012-2013 the Real Estate Department executed 72 new leases/licenses, relocations and renewals of existing leases. These 72 leases/licenses have an aggregate revenue value of \$3,064,990 annually and represent 5,488,410 sq. feet. The majority of this square footage (2.6 million sq. ft.) represents facilities under agreement with the America's Cup Event Authority and therefore have no associated dollar value. The remaining renewals were negotiated at or above the approved parameter rents for the type of premises which range from \$.25 for raw land to \$2.90 for improved office in the northern waterfront.

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credit terms. (see Exhibit A) for a copy of the primary term lease boiler plate Real Estate staff follows a process and guidelines contained in its Leasing Policy manual, an internal administrative document. While tenants come to the Port through a variety of sources, the process for a new lease officially kicks off when a prospective tenant submits a lease application. Real Estate staff has, with the assistance of the City Attorney staff and guidance from the Port Commission, streamlined, as much as possible, the application process for prospective tenants. Due to the diverse nature of Port properties, it is not easy to process requests on a one-size-fits all-basis. However, policies set in place have made each process transparent in order to comply with City codes, laws and ordinances, and regulatory requirements.

Lease Process • As a public landlord, the Port strives to maintain standard and consistent procedures for all tenants and prospective tenants. Standardized leasing procedures are designed to ensure that leases/licenses for real property under the jurisdiction of the Port meet the following criteria:

- Accurately document all areas of liability, responsibility and accountability for the Port, the tenant and the property during the term of the lease;
- Ensure the integrity and auditability of all real property transactions;
- Ensure the highest and best use for Port properties;
- Ensure that the uses are consistent with the Port's Waterfront Land Use Plan, Port Commission policies, City zoning laws, the Burton Act, the Public Trust and other Local, State and Federal regulatory mandates;
- Ensure that all leases/licenses are in accordance with the Port Commission's approved parameter rents;
- Ensure that any lease terms outside of policy and/or parameter rent guidelines are approved by the Port Commission; and
- Ensure that all required leases are approved at the Board of Supervisors if the term is more than 10 years and/or revenue over the term of the lease exceeds \$1 million¹.

The Port lease process for sites that are not subject to a Request for Proposals is generally divided into four basic phases: the application phase, evaluation phase, the lease preparation phase and the execution phase:

Application Phase

1. Initial contact from prospective tenant
2. Prospective tenant submits lease application

Evaluation Phase

3. Lease application is evaluated by Port Real Estate, Regulatory, Historic Preservation and Building Code staff

¹ This is a requirement of the City's Charter Section 9.118

4. Prospective tenant reviews boilerplate lease terms

Preparation Phase

5. Port staff prepare the Basic Lease Information ("BLI") which customizes the boiler plate lease to the facility and the prospective tenant
6. If applicable, Lease is submitted to Port Commission for review and approval
7. If applicable, Lease is submitted to Board of Supervisors for review and approval

Execution Phase

8. Tenant submits all requisite insurance policies, deposits and operations plans, if any
9. Lease is executed by the Port and prospective tenant
10. New tenancy becomes part of the respective Property Manager's portfolio
11. New lease is added to PropWorks and EXIGIS and then documents filed in both an original file and working file.

Processing time • If the lease request is a standard lease that does not need Port Commission or Board of Supervisor approval, turnaround time from application to possession is three to four weeks and is often driven by the tenant's ability to gather corporate signatures, make the requisite deposits and obtain all insurance policies.

Depending on the complexity of a lease, and if Port Commission approval is required, 30-90 days could be added to the process. A lease requiring Board of Supervisor approval could take up to six months to complete as it would first need to be heard by the Port Commission, then introduced at the Board and calendared, then heard by the Board's Land Use Committee and finally sent on to the full Board for approval.

Application Phase • The application is a typical real estate application that requests both general information about the tenant, such as legal ownership, history of the business or individual, credit and financial information. The application also requests more specific information regarding the proposed tenancy, such as proposed use of the facility, environmental issues and hazardous materials considerations. The Lease application for Port property is available on the Port's website (sfport.com/Real Estate), via US Mail or picked-up at the Port's administrative offices at Pier 1. (A copy of the lease application is attached as Exhibit B).

Evaluation Phase • Each lease application is given the same level of due diligence. Once the application has been completed by the prospective tenant and returned to the Port, the Leasing or Property Manager reviews the request, as it pertains to the use of the property, and reviews the applicant's financial statements and credit reports to determine if basic requirements have been met. The Port utilizes the services of Dun & Bradstreet to review the credit history and viability of business applicants and uses the services of Experian to review the credit history of individuals.

The intended use of the facility is also closely reviewed to ensure that it is in compliance with Port policy, the Waterfront Land Use Plan and approved building codes for the intended facility. Changes of use require approval from the Port's Planning and Development Division (or the Department of City Planning) in conjunction with a California Environmental Quality Act (CEQA) review. If the intended use is a retail use then the City Ordinance requiring public bidding and the Port's Retail Leasing policy are triggered (see discussion below).

In order to efficiently process lease applications and ensure that all policy and regulatory steps are approved, the Real Estate Leasing Manager holds an internal, weekly Leasing Pipeline meeting so issues related to CEQA, BCDC (Bay Conservation and Development Commission), planning and regulatory issues, fire code, historic preservation, environmental plans and storm water management plans can be addressed at one meeting, streamlining the process and reducing the processing time.

There are multiple regulatory agencies/requirements/reviews that may impact the processing of a lease. They include but are not limited to:

1. Bay Conservation and Development Commission (BCDC)
2. State Lands Commission (for Burton Act, Public Trust compliance)
3. Regional Water Quality Control Board (RWQCB)
4. California Environmental Quality Act (CEQA)
5. State Historic Preservation Office (SHPO)
6. Bay Area Air Quality Management District (BAAQMD)
7. U.S. Army Corps of Engineers (USACE)
8. San Francisco Public Utilities Commission (SFPUC)
9. San Francisco Department of Public Health (SFPDH)
10. San Francisco Department of the Environment (SFDOE)

Additionally, if the project or lease will cause a significant impact to a specific area, the Community Advisory Committee (CAC) for the area may need to be consulted or a meeting held to discuss the impact on the area. For example, for leases in the Southern Waterfront where truck trips and noise and air pollution are closely monitored or if the new tenant activity increases general traffic to the area.

All construction activity on Port property requires a Building Permit from the Port's Engineering/Permit Department. Each request for a permit is first reviewed by the Property Manager to ensure the request is in compliance with the Lease. It is then reviewed by the Port's Planning and Development Division for regulatory and historic preservation compliance. It is then reviewed by the Building Permit staff for compliance with the Americans with Disabilities Act (ADA) and the California Building Code. At times this process can add 7-14 business days to the leasing process especially if the tenant's drawings are incomplete when submitted to the Port.

Lease Preparation Phase • Once the application is reviewed with all appropriate internal approvals as discussed above, the Leasing Manager prepares a BLI (Basic Lease Information) sheet and works with the assigned Deputy City Attorney to prepare the final

lease document. The BLI summarizes the lease terms unique to the prospective tenancy including the allowable uses, term length, renewal options, facility rental rate and rent increases over the term of the lease. A sample BLI is provided in Exhibit A (the BLI is a part of the boilerplate lease and found at the beginning of the document).

Some of the basic terms contained in all Port standard leases, include but are not limited to:

- Annual rent escalation: rents are adjusted annually by fixed increments averaging 3% per year over the term of the lease. Over the past several years the Port has transitioned from calculating rate increases based the CPI (Consumer Price Index) and instead sets fixed increases. This change in calculation has allowed for streamlined implementation by the Port and has provided the tenant with certainty about annual rental adjustments. In most cases when a term exceeds five years, the lease will call for resetting the base rent according to market rates, based on a market appraisal, every five years.
- Rent credits: Any rent credit (beyond carpet and paint upgrades) must be approved by the Port Commission and must be included in the lease language. Typically, Port staff recommends rent credits only for expenditures that improve the Port's asset (rather than customizing the space for the tenant's use). Port staff also recommends amortizing the rent credit at a value no greater than 50% of the rental rate.
- Uses and premises description: specific uses are itemized so that all parties understand what activities and uses are allowed over the term of the lease.
- Security Deposits: all standard leases contain requirements for a security deposit in an amount equal to two times the amount of the rent in the last month of the term. This takes into account all annual rent escalations over the term of the lease and reduces the need for the tenant to increase the deposit annually with each annual escalation.
- Dates: includes commencement dates, expiration dates and trigger dates for any special conditions such as completion of tenant improvements, compliance with regulatory permit improvements, etc.
- Environmental Deposits: for any use that contains the potential for inordinate environmental risk, the Port may require the tenant to maintain an Environmental security deposit. The amount of the deposit is based on a risk assessment performed by the Port's Environmental staff. The Port may also require the tenant to pre-submit an Operations Plan that provides a detailed description of the proposed operations, materials, equipment, and chemicals, as well as best management practices to ensure regulatory compliance and the safety of the environment and community.

Execution Phase • Once the lease document is complete it is forwarded to the prospective tenant for review and signature. Prior to final execution, staff works with the tenant to ensure that the required insurance policies are in place using the City's on-line EXIGIS insurance tracking system. Any environmental deposits and/or security deposits must also be received by the Port prior to granting possession of the facilities to the new tenant. In some cases, depending on the use or tenant, the Port requires an

Operations Plan prior to execution of the lease to ensure that uses, environmental issues, ingress/egress, parking are all reviewed and approved and incorporated into the lease.

Lease Renewal Process • Should an existing tenant wish to renew or extend an expiring lease, the tenant must first be in good standing per the Port's Tenant in Good Standing Policy (Resolution No. 09-49). The Property Manager will negotiate new terms with the tenant and determine its desire to continue its tenancy. To initiate the renewal process, Port staff request the tenant complete an application to ensure all information is current. The application is then processed using the same evaluation process described above. The process is shorter as many of the steps are truncated because much of the information needed, such as premises maps, insurance, history and knowledge of the business and uses of the premises, is known. Whenever a lease is renewed, market rate rents are applied but at no time lower than the Commission approved parameter rates.

Retail Opportunities • It is City and Port policy to publically bid any retail opportunity as articulated in the City's Administrative Code Charter Section 9.118. Some exceptions to the bidding requirement are allowed per the Port's Retail Leasing Policy (Port Commission Resolution 11-55). For retail leases, there are several additional steps that need to take place that lengthens the time for lease approval:

1. Once it is determined what the nature of the retail opportunity is, staff will seek permission from the Port Commission to issue a Request for Proposal (RFP);
2. The RFP will be issued, posted on the Port's website, advertised in the local newspapers (e.g.: Philippine News, China Press, SF Bayview) which are approved by the City's Human Rights Commission, and a notice sent to each Port tenant. The notice is also sent to the City Purchaser's Office to be distributed via its network. Additionally, staff also outreaches to community-based organizations such as the Bayview Business Resource Center, Renaissance Entrepreneurship Center, South of Market Foundation, La Cocina and industry organizations such as the Golden Gate Restaurant Association. Staff also includes outreach to those individuals and businesses that have requested notification.
3. A pre-submittal meeting for potential respondents is held to tour the prospective property with interested parties and answer any questions the potential respondents may have before the submittal deadline;
4. Responses to the RFP, together with an earnest money deposit, are required to be submitted at a date certain, usually 45 days from issuance;
5. An initial review is conducted of the submitted packages to ensure they comply with the RFP qualifications and record receipt of the earnest money deposit;
6. A panel of both Port staff and outside industry representatives is formed to evaluate the responses based on pre-set qualification criteria that typically includes proposed use of the space, respondent's experience, financial capability, credit history, soundness of the proposal compared to the Port's parameter rent requirement and proposer's percentage rent offering, and tenant investment vs. rent credits requested;

7. Once the panel has ranked the proposals, the respondents are invited in for an interview and all respondents are requested to answer a pre-set series of questions;
8. Port staff then returns to the Port Commission with the results of the RFP and recommends the highest qualified respondent and requests permission to negotiate with the top respondent, for a period of 60 days; and
9. When the lease negotiations are complete and a lease document is agreed upon, Port staff returns to the Port Commission for approval, which also may be subject to Board of Supervisor approval (Board of Supervisor approval may add 60-90 days to the final approval process).

If a current tenant's retail lease expires, certain bidding waivers under the Retail Leasing Policy may apply. Alternately, the opportunity may be re-bid, especially if the tenant is not in good standing or the facility operations are underperforming relative to similar operations in the market.

Advertisement of Leasing Opportunities • The entire leasing process described above is conducted internally by Port Real Estate staff. The Port lists its vacancies on Costar Group (*Costar.com*) the leading commercial Real Estate information company in the US. Costar.com allows users to search by area and property. Costar has assigned a representative to the Port who calls monthly to receive new information on Port vacancies. Brokers have brought transactions to the Port which most recently include leases with Autodesk (Pier 9) and Yellow Cab (Pier 70) and, in the past, MK Think (Roundhouse 1), Voxpop (Pier 9) and Mercon (Pier 50). Broker fees, per Port Commission Resolution No. 07-29, are paid by the tenant and not the Port.

In addition to outreach to the professional Real Estate community, staff also outreaches to community-based organizations such as the Bayview Business Resource Center, Renaissance Entrepreneurship Center, South of Market Foundation, La Cocina and industry organizations such as the Golden Gate Restaurant Association.

The Port is also in continual contact directly with the Real Estate Brokerage community. Real Estate staff reaches out to the Broker community for comparable data when setting rates for the Port Commission's annual parameter rent schedule. Port staff also works with brokers on a consulting basis when specific project assistance is needed. Additionally, from time to time, prospective tenants are brought to the Port via a Real Estate Broker. In keeping with the Port Commissioners' requests at a previous meeting, staff will post vacancies on the Port website beginning September 2013 and will continue outreach to the Broker community when large vacancies occur. Port staff will also keep the Commissioners informed of all vacancy opportunities by providing a vacancy report in the monthly package provided by the Commission Secretary.

Telecommunication Leases • The Port may enter into leases for telecommunications sites for up to nine (9) years without Port Commission approval (Resolution No. 96-123). The same leasing process is followed as for all Port leases. The Port currently holds a total of 8 leases with AT&T, Metro PCS, Sprint and T-Mobil. Pier 39 also hosts cell sites but those are handled and approved as sub-leases under Pier 39's master

lease. Per the Port Commission's annual parameter rent schedule, the monthly rent for a cell site is \$5,700 for each fixed site and \$380 per day for temporary sites for up to sixty days. These rates are slightly above market rates (equating to \$4,500/month on average) due to the additional regulatory reviews required, desirability and high demand for Port locations.

Sub-Leases • Some Port tenants hold a master lease for a facility and are allowed subtenant privileges. Depending on the language in the lease, Port approval may be required for a tenant to sublease. Ground leases, such as the Ferry Building, AT&T Park, Pacific Waterfront Partners at Pier 1½, 3 and 5, or Pier 39 do not require Port approval for subleases. Prologis and Pier 33 LLC for example, do need to have subleases approved by the Port.

Vacancies • The Port's Leasing Manager maintains a master vacancy report, with input from the Property Managers, tracking all available space at the Port. Due to relocations to accommodate the City's hosting of the 34th America's Cup and the high demand for waterfront locations, the Port has enjoyed an unusually low vacancy rate over the last two years. The demand for space along the waterfront is high. The Port's current office vacancy rate is 8% (excluding facilities in the America's Cup Host Venue agreement) compared to the City wide rate of 9.5% on June 1, 2013. The Port's current vacancy rate for warehouse space is 0.3% (6,000 sq. ft.) (excluding America's Cup venues). Comparatively, the average vacancy for warehouse space City wide is 4.7%

In preparation of the America's Cup venues returning to inventory following the events, Port Planning and Development, Real Estate and Maritime staffs have been engaged in a process to determine highest and best use for any upcoming large vacant spaces. Port staff will formulate a recommendation for reuse of these popular locations to share with the Port Commission in the coming months.

Expiring, Month-to-Month and Holdover Leases • Approximately 60 leases expire each year. Within the Port's portfolio, there are three distinct categories of non-term leases, each containing distinct policies and strategies. They are Expiring Leases, Month-to-Month Leases and Holdover Leases.

Currently, there are 135 total expired holdover leases (24% of the total portfolio) of which, 56 (41% of all holdover leases) fall under the Port Commission's approved criteria. These holdover leases are in various stages of negotiation. The extraordinary workload of the Port Real Estate Division resulting from implementation of the America's Cup facilities did cause a minor backlog in converting the holdover leases to term leases. Port staff expects to return to a more normalized level of lease renewals in this current fiscal year. An explanation type of holdover lease follows below:

Expiring leases: Port staff receives monthly notification from the PropWorks system via a Tickler report that leases are expiring 90 days prior to expiration. The Property Manager will contact the tenant to begin the process of updating the application and determining if the tenant wishes to enter into a new term lease. If the tenant is a tenant in good standing a new lease will be prepared using the same process as a new tenant

to the Port. There are 60 leases due to expire between July 15, 2013 and June 30, 2014.

Month-to-Month Leases: Some leases or licenses are intended to be approved and remain on a month-to-month basis for a variety of reasons, for example: short term uses, leases at pending development sites (such as at Pier 70), fish gear storage, berthing, intermittent activities or fish processing. A short term use is described as one that would last less than 90 days or for an encroachment easement, such as construction or repair. An intermittent use is described as one that occurs periodically such as the Delancey Street Christmas Tree lot. Currently, there are 112 month-to-month leases (20% of the total portfolio of 557) in the Port wide portfolio which break out as follows:

Use Type	No. of Leases	%
Short Term Leases (storage/land/SFFD agreement)	18	16%
Pending Development Site	2	2%
Fish Gear Storage	35	31%
Berthing	1	1%
Easement, Encroachment, Parking	52	46%
Fish Processing	4	4%
Total	112	100%

On May 26, 2009, the Port Commission approved the Month-to-Month Leasing Policy (Resolution No. 9-28) confirming that month-to-month tenancies were acceptable for these lease types. Port staff also discussed this policy with the Board of Supervisors and the Board's Budget Analyst to ensure that the Port's policy was understood and accepted. This policy was further amended on July 7, 2010 (Resolution No. 10-50) to modify the policy allowing Port staff to enter into lease amendments for those existing holdover or month-to-month leases with (i) monthly rent of \$3500 or less and (ii) in areas formally designated by the Port Commission as development sites (i.e., Pier 70, Pier 48), provided that such lease amendments increase rent immediately or, over the period of the amendment, equate to the Port Commission's parameter monthly rental rates. A subsequent informational update was given to the Port Commission on January 6, 2011 summarizing the Port's current policy. The Port's portfolio continuously contains approximately 100 month-to-month leases.

Holdover Leases: From time to time more leases expire than can be renewed in a timely manner. On average, approximately 60 leases expire each year representing 11% of the Port's portfolio. As a part of its standardized terms (aka Boiler plate language) each lease contains provisions that allow for a holdover period which reads as follows:

1.1. Terms of Holdover Tenancy. *Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but be deemed a month-to-month tenancy upon the terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against*

any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

1.2. With Consent. *If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher of the: (a) Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.*

1.3. Without Consent. *If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.*

To ensure that the Port does not miss an opportunity to raise rents while leases are holding over, the leases provide for rents during the Holdover period to be reset to current parameter rates. The Port has learned over the years that a small annual increase is more manageable for our tenants than a large increase after a protracted period.

Of the 135 Expired Holdover leases approximately 5 tenancies will remain on holdover status until they can comply with the Port's Tenant in Good Standing Policy or, if they cannot comply, they will be terminated. Approximately 62 tenancies will stay on holdover status because their current leasehold is part of a pending or future development area. Approximately 26 leases that have expired will be renewed as month-to-month leases because the tenancies fall into the category of uses such as fish gear storage or utility easements. Four (4) tenancies will be terminated as the tenants have given notice thereof. The remaining 38 tenancies will receive new term leases as the Property Managers complete negotiations and leasing through the process described above. Port staff strives to bring each expired lease to market rents, but not below approved Commission approved parameter rates, whether a new term lease is executed or not.

Collections: The Port employs one staff member to manage collections for both Real Estate and Maritime delinquencies. She has developed a good working relationship with tenant CFOs and bookkeepers and personally makes telephone calls to discuss delinquent payments. Collection staff and property managers meet monthly to discuss delinquent accounts to determine next steps on delinquent tenants. Should a tenant not

cure its delinquency then the property manager would issue a Notice to Cure or Quit and contact the tenant to inform it that this Notice has been issued. If the tenant still does not cure the delinquency, then the account will be turned over to the City Attorney to proceed with an Unlawful Detainer action. Port staff uses its best efforts to assist tenants to prevent Unlawful Detainer action. Currently there is one (1) delinquent tenancy with an Unlawful Detainer action in progress. There are seven (7) additional accounts with Legal for litigation and/or settlement.

Reports and Tracking of Real Estate Portfolio

The primary lease tracking system used by the Port is called "PropWorks". Currently Real Estate staff is working with our IT staff to upgrade PropWorks to ensure it is fully supported and better able to produce quality reporting.

Staff produces a monthly rent roll containing all pertinent lease information such as name, address, facility code, commencement date, expiration date, square footage, rate per square foot, leasehold type and monthly rent.

In addition to the monthly Rent Roll Report, other reports used by staff to track the portfolio are:

1. Vacancy Report: current vacancy is 8% vs. 9.5% City wide
2. Delinquency Report: as of June 2013, 0.56% of the portfolio is delinquent for a period of 60 days or more. Delinquent accounts total \$217,973. This amount is exclusive of accounts in litigation which total \$2.6 million.
3. Monthly Reconciliation Report (shows terminated/expired vs. new/renewed leases)
4. Tickler Report (tracks key dates and activities that require Property Manager action)
5. Tenant Contact Report
6. EXIGIS insurance tracking system reports

Conclusion

This is an informational presentation only and no action is required. Port staff's goal is to provide timely customer service, employ best practices and established policies when marketing and negotiating leases, and manage the Port's portfolio to ensure maximum revenue. Over the last four years, the economy has experienced a recession and the Port has been a partner with the City in providing venues for the 34th America's Cup, yet Real Estate has been able to continue to maintain, and in some cases, increase revenues to the Port.

Real Estate Annual Revenues:

2009	\$51,795,481
2010	\$52,222,712
2011	\$57,135,662
2012	\$59,417,170
2013	\$59,151,995

During this 5-year period the Real Estate Division consummated in excess of 260 property agreements controlling 9.5 million square feet and generating annual revenues of \$24 million.

In addition, the Port's Property Managers continued to manage the entire portfolio of 557 leases, respond to tenant inquiries, show vacant properties, relocate or assist in terminating 37 tenants to facilitate the America's Cup events and project manage several exciting tenant improvement projects, including:

- Black Coalition on AIDS (601 Cesar Chavez)
- Mission Rock Resort (Terry Francois Blvd at Pier 64)
- Bauer's Intelligent Transportation (Pier 50)
- Dawson Clinton Construction (Pier 50)
- Pier 24 Pilara Foundation renovation
- Prologis energy conservation project (Pier 1)
- Hornblower pier renovation (Pier 3)
- AutoDesk (Pier 9)
- Cabouchon (Pier 9)
- Exploratorium, transition from Development project to permanent tenant (Pier 15, 17)
- Aclima (Roundhouse)
- Ammunition (Roundhouse)
- Lou's Blues
- Boudin's, phase two of the Octagon renovation (Taylor Street, Fisherman's Wharf)
- Jefferson Street Public Realm Project (Fisherman's Wharf)
- Pier 43 ½ Promenade (Fisherman's Wharf)

All 20 members of the Real Estate Division are proud to serve the Port, the Port Commissioners, our tenants and the City in managing this wonderfully unique waterfront of diverse facilities, users and lease needs.

Prepared by:	Mark Lozovoy, Asst. Deputy Director Nate Cruz, Principal Administrative Analyst Erin Hanford, Senior Management Assistant Jeff Bauer, Leasing Manager Cora Sapaen, Senior Collection Officer David Rosales, Management Assistant Jay Edwards, Senior Property Manager Elliott Riley, Senior Property Manager Richard Berman, Environmental Compliance
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For:	Susan Reynolds, Deputy Director, Real Estate
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Exhibits

- A Primary Boilerplate Lease and BLI
- B Lease Application

EXHIBIT A
(BOILERPLATE LEASE § BL1)



CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

LEASE NO. L-

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO
OPERATING BY AND THROUGH THE
SAN FRANCISCO PORT COMMISSION

AND

[INSERT NAME OF TENANT]

[INSERT NAME OF FACILITY]

MONIQUE MOYER
EXECUTIVE DIRECTOR

SAN FRANCISCO PORT COMMISSION

DOREEN WOO HO, PRESIDENT
KIMBERLY BRANDON, VICE PRESIDENT
WILLIE ADAMS, COMMISSIONER
LESLIE KATZ, COMMISSIONER
MEL MURPHY, COMMISSIONER

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SCHEDULE 2	SUBSTRUCTURE REPORT(S)
SCHEDULE 3	FEMA DISCLOSURE NOTICE

**LEASE AGREEMENT
BASIC LEASE INFORMATION**

<i>Lease Date:</i>	_____ ,
<i>Lease Number:</i>	L-
<i>Landlord or Port:</i>	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION
<i>Landlord's Address:</i>	Port of San Francisco Pier 1 San Francisco, California 94111 Attention: Director of Real Estate Telephone: (415) 274-0400 Facsimile: (415) 274-0494
<i>Tenant:</i>	_____, a _____ corporation
<i>Tenant's Contact Person:</i>	
<i>Tenant's Mailing Address:</i>	Telephone: () Facsimile: () Email:
<i>Tenant's Billing Address:</i>	Telephone: () Facsimile: () Email:
<i>Contact Information for Tenant's Agent for Service of Process:</i>	
<i>Premises:</i>	[_____, Suite/Bay ____]
<i>Facility:</i>	[_____] San Francisco, California 941[]

<i>Premises Rentable Square Footage:</i>	Approx. _____ rentable square feet of _____ space			
<i>Length of Term:</i>	_____ (____) months			
<i>Commencement Date:</i>				
<i>Rent Commencement Date:</i>				
<i>Expiration Date:</i>				
<i>Monthly Base Rent:</i>	Months	Sq. Ft.	Monthly Base Rate	Total Monthly Base Rent
	1-12		\$ _____	\$ _____
	13-24		\$ _____	\$ _____
	25-36		\$ _____	\$ _____
<i>Security Deposit:</i>	_____ Dollars (\$ _____)			
<i>Environmental Security:</i>	Ten Thousand Dollars (\$10,000)			
<i>Permitted Use:</i>				
<i>Additional Prohibited Uses:</i>				
<i>Substructure:</i>	See Schedule 2 attached hereto.			
<i>Maintenance and Repair:</i>				
<i>Utilities:</i>				
<i>Location of Asbestos in Facility:</i>				

<i>Hazardous Materials Disclosure:</i>	
<i>Rules & Regulations:</i>	
<i>Development Project:</i>	
<i>Required Tenant Improvements:</i>	
<i>Prior Lease:</i>	
<i>Lease Prepared By:</i>	

LEASE AGREEMENT

This Lease Agreement, dated for reference purposes only as of the Lease Date set forth in the Basic Lease Information, is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("**City**"), operating by and through the **SAN FRANCISCO PORT COMMISSION** ("**Port**"), as landlord, and the Tenant identified in the Basic Lease Information ("**Tenant**"). The basic lease information (the "**Basic Lease Information**"), the exhibits, schedule and the Lease Agreement are and shall be construed as a single instrument and are referred herein as this "**Lease**". In event of any conflict or inconsistency between the Basic Lease Information and the Lease Agreement, the Basic Lease Information will control.

1. DEMISE.

In consideration for the rents and all other charges and payments payable by Tenant, and for the agreements, terms and conditions to be performed by Tenant in this Lease, Port does hereby lease to Tenant, and Tenant does hereby hire and take from Port, the Premises upon the agreements, terms and conditions of this Lease for the Term hereinafter stated.

2. DEFINITIONS.

Definitions used in this Lease, are found in the specified locations in this Lease or are set forth below. Definitions that are not capitalized below are not capitalized when used in this Lease.

"ACMs" is defined in Section 15.6 below.

"ADA" means the Americans with Disabilities Act, a federal law codified at 42 U.S.C. §§ 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of Title 24 of the State of California, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

"Additional Rent" means all taxes, assessments, insurance premiums, operating and maintenance charges, fees, costs, expenses, liabilities and obligations of every description which Tenant assumes or is obligated to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or to other persons, parties or entities designated herein.

"Affiliate" means: (i) a Person that Controls or is Controlled by Tenant, or is Controlled by the same Person that Controls Tenant; or (ii) if Tenant is a natural Person, any designated successor by trust, will, or court order following Tenant's death or incapacity.

"Affiliate Transfer" means a Transfer from Tenant to an Affiliate meeting the requirements of Section 20.1.

"Agents" when used with reference to either party to this Lease or any other person, means the officers, directors, employees, agents, and contractors of the party or other person, and their respective heirs, legal representatives, successors, and assigns.

"Alterations" means any alterations, installations, improvements, or additions to any Improvements or to the Premises.

"Anniversary Date" means the first and each subsequent anniversary of the Commencement Date; provided, however, that if the Commencement Date is not the first day of a month, then each Anniversary Date shall be calculated from the first day of the thirteenth (13th) month after the Commencement Date.

"Assignment" means a proposed or actual Transfer of Tenant's rights, title, and interest in all or any part of the Premises under a contractual assignment or an assignment by operation of Law.

"Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

"Base Rent" means the monthly Base Rent specified in the Basic Lease Information and described further in Section 5.1 hereof.

"BCDC" means the Bay Conservation and Development Commission.

"Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to its business, this Lease, and the operation and maintenance of the Premises, including cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises and any other bookkeeping documents used in Tenant's business operations for the Premises, whether maintained by Tenant or a third-party contractor.

"business day" means any week day during which businesses are generally open for business, excluding local, state, and federal holidays observed by Port.

"Cal-OSHA" is defined in Section 15.6 below.

"Changes" is defined in Section 10.2 below.

"City" means the City and County of San Francisco, a municipal corporation.

"Claims" means all liabilities, injuries, losses, costs, claims, demands, rights, causes of action, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind for money damages, compensation, penalties, liens, fines, interest, attorneys' fees, costs, equitable relief, mandamus relief, specific performance, or any other relief.

"Commencement Date" means the date on which the Term commences as specified in the Basic Lease Information.

"Commission" means the San Francisco Port Commission.

"Common Areas" means all areas outside of the Premises and within the boundaries of the Facility that are not now or hereafter exclusively leased or exclusively permitted to other tenants or permittees, and that are designated by Port from time to time for the general common use or convenience of Port, Tenant, or other tenants of Port, and the respective authorized Agents and Invitees of the same. The Common Areas include, without limitation, driveways, delivery areas, pedestrian walkways, service corridors accessing loading docks, utility rooms, and other areas or improvements provided or designated by Port for common use. The Common Areas shall not include any parking areas located outside the boundaries of the Facility.

"Conduct Code" is defined in Section 28.13 below.

"Concession" is defined in Section 30.8 below.

"Control" means a Person that: (a) owns or has the right to acquire 50 percent or more (25 percent or more if publicly traded) of each class of equity interests in the second Person or 50 percent or more (25 percent or more if publicly traded) of each class of interests that have the right to nominate, vote for, or otherwise select the members of the governing body that directs or causes the direction of substantially all of the management and policies of the second Person; or (b) otherwise has the right to direct or cause the direction of substantially all of the management and policies of the second Person.

"Core Benefits" is defined in Section 28.1(c) below.

"CPA" means an independent certified public accounting firm acceptable to Port in its reasonable discretion.

"Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

"disturbed or removed" is defined in Section 13.2(g) below.

"Encroachment Area" is defined in Section 3.2 below.

"Encroachment Area Charge" is defined in Section 3.2 below.

"Environmental Laws" means any Laws relating to Hazardous Material (including its Handling, Release, or Remediation) or to human health and safety, industrial hygiene, or environmental conditions in the environment, including structures, soil, air, bay water, and groundwater, and any environmental mitigation measure adopted under Environmental Law affecting any portion of the Facility.

"Environmental Regulatory Action" when used with respect to Hazardous Materials means any inquiry, Investigation, enforcement, Remediation, agreement, order, consent decree, compromise, or other action that is threatened, instituted, filed, or completed by an Environmental Regulatory Agency in relation to a Release of Hazardous Materials, including both administrative and judicial proceedings.

"Environmental Regulatory Agency" means the United States Environmental Protection Agency, OSHA, any California Environmental Protection Agency board, department, or office, including the Department of Toxic Substances Control and the San Francisco Bay Regional Water Quality Control Board, Cal-OSHA, the Bay Area Air Quality Management District, the San Francisco Department of Public Health, the San Francisco Fire Department, the San Francisco Public Utilities Commission, Port, or any other Regulatory Agency now or later authorized to regulate Hazardous Materials.

"Environmental Regulatory Approval" means any approval, license, registration, permit, or other authorization required or issued by any Environmental Regulatory Agency, including any hazardous waste generator identification numbers relating to operations on the Premises and any closure permit.

"Exacerbate" or "Exacerbating" when used with respect to Hazardous Materials means any act or omission that increases the quantity or concentration of Hazardous Materials in the affected area, causes the increased migration of a plume of Hazardous Materials in soil, groundwater, or bay water, causes a Release of Hazardous Materials that had been contained until the act or omission, or otherwise requires Investigation or Remediation that would not have been required but for the act or omission. Exacerbate also includes the disturbance, removal or generation of Hazardous Materials in the course of Tenant's operations, Investigations, maintenance, repair, Improvements and Alterations under this Lease. "Exacerbation" has a correlating meaning.

"Excess Rent" means Sublease rent and any other sums paid or payable to Tenant under a Sublease, excluding the value of goodwill, in excess of Tenant's concurrent Rent obligation for the Sublease premises.

"Expiration Date" means the date on which the Term expires as specified in the Basic Lease Information.

"Event of Default" is defined in 21 below.

"Facility" means the pier, building or other structure in or on which the Premises are located.

"Facility Systems" means the plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Facility.

"financial statements" mean a current balance sheet and profit and loss statements that have been reviewed or examined by a CPA.

"Habitual Late Payer" means Tenant has received (a) at least two (2) notices of monetary default, or (b) at least three (3) notices of default within a twelve (12) month period.

"Handle" or "Handling" means to use, generate, process, manufacture, produce, package, treat, transport, store, emit, discharge, or dispose of a Hazardous Material.

"Hard costs" is defined in Section 11.3 below.

"Hazardous Material" means any substance, waste, or material that is now or in the future designated by any Regulatory Agency to be capable of posing a present or potential risk of injury to human health or safety, the environment, or property. This definition includes anything designated or defined in any Environmental Law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, and PACMs, whether or not part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or occurring in nature; and other naturally-occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

"Hazardous Material Claim" means any Environmental Regulatory Action or any Claim made or threatened by any third party against the Indemnified Parties, or the Premises or the Facility, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or Release of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, any other part of the Facility, or other Port property, the loss or restriction of the use or any amenity of the Premises, any other part of the Facility, or other Port property, and attorneys' fees and consultants' fees and experts' fees and costs.

"Hazardous Material Condition" means the presence, Release, or threatened Release of Hazardous Materials in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises.

"HEPA" is defined in Section 13.2(g) below.

"Improvements" means any and all buildings, structures, fixtures or other improvements constructed or installed on the Premises or any other part of the Facility, including those constructed by or on behalf of Tenant pursuant to this Lease (including, without limitation, any trailers, signs, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping).

"Improvement Costs" is defined in Section 4.2 below.

"Improvements Pertaining to the Realty" means machinery or equipment installed for use on the Property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the property in place considered as part of the realty should be compared with its value if it were removed and sold.

"Indemnified Parties" is defined in Section 19.1 below.

"Indemnify" means to indemnify, protect, defend, and hold harmless forever.
"Indemnification" and **"Indemnity"** have correlating meanings.

"Interest Rate" means ten percent (10%) per year or, if a higher rate is legally permissible, the highest rate an individual is permitted to charge under Law.

"Investigate" or "Investigation" when used with reference to Hazardous Materials means any activity undertaken to determine and characterize the nature and extent of Hazardous Materials that have been, are being, or are threatened to be Released in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment, and includes, without limitation, preparation and publication of site history, sampling, and monitoring reports, performing equipment and facility testing such as testing the integrity of secondary containment and above and underground tanks, and sampling and analysis of environmental conditions before, during, and after Remediation begins and continuing until the appropriate Environmental Regulatory Agency has issued a no further action letter, lifted a clean-up order, or taken similar action.

"Invitees" means Tenant's clients, customers, invitees, patrons, guests, members, licensees, permittees, concessionaires, assignees, subtenants, and any other person whose rights arise through them, except that for the purposes of Article 20 (Assignment and Subletting), **"Invitees"** excludes Tenant's licensees, assignees, subtenants, and any other person whose rights arise through them.

"Late Charge" means a fee equivalent to fifty dollars (\$50.00).

"Law" means any present or future law, statute, ordinance, code, resolution, rule, regulation, judicial decision, requirement, proclamation, order, decree, policy (including the Waterfront Land Use Plan), and Regulatory Approval of any Regulatory Agency with jurisdiction over any portion of the Premises and any and all recorded and legally valid covenants, conditions, and restrictions affecting any portion of the Facility, whether in effect when this Lease is executed or at any later time and whether or not within the present contemplation of the parties, as amended from time to time.

"Lease" is defined in the preamble to this Lease.

"Non-Affiliate" means a Person that is not an Affiliate.

"Notice of Removal" is defined in Section 13.4 below.

"Notice to Cease Prohibited Use" is defined in Section 8.3 below.

"Notice to Vacate" is defined in Section 3.2 below.

"Official Records" means the official records of the City and County of San Francisco.

"OSHA" is defined in Section 15.6 below.

"PACMs" is defined in Section 15.6 below.

"Person" means any natural person, corporation, limited liability entity, partnership, joint venture, or governmental or other political subdivision or agency.

"Pesticide Ordinance" is defined in Section 28.9 below.

"Port" means the San Francisco Port Commission.

"Port program or project" shall mean (a) any development or renovation, by public and/or private parties, of the building, pier or seawall lot in, on or in the vicinity of the Premises (including, but not limited to the Event as described in Section 3.5 and any Development Project described in the Basic Lease Information), or (b) with respect to any areas owned by Port or under Port's jurisdiction between and including Piers 80-96, maritime uses (by way of example only and not as a limitation, cargo shipping, fishing, passenger cruises, ship repair, ferries and excursion boats, historic ships and recreational boating).

"Port representative" means Port, a City auditor, or any auditor or representative designated by Port.

"Port Work" is defined in Section 13.8 below.

"Premises" means the real property described in Section 3.1 below and depicted on Exhibit A.

"preservative-treated wood containing arsenic" is defined in Section 28.12 below.

"prevailing party" is defined in Section 23.1 below.

"Prohibited Use(s)" is defined in Section 8.2 below.

"Regulatory Agency" means the municipal, county, regional, state, or federal government and their bureaus, agencies, departments, divisions, courts, commissions, boards, officers, or other officials, including the Bay Conservation and Development Commission, any Environmental Regulatory Agency, Port (in its regulatory capacity), other departments, offices, and commission of the City and County of San Francisco (each in its regulatory capacity), Port's Chief Harbor Engineer, the Dredged Material Management Office, the State Lands Commission, the Army Corps of Engineers, the United States Department of Labor, the United States Department of Transportation, or any other governmental agency now or later having jurisdiction over Port property.

"Regulatory Approval" means any authorization, approval, license, registration, or permit required or issued by any Regulatory Agency.

"Release" when used with respect to Hazardous Materials means any actual or imminent spilling, introduction, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Premises, any other part of the Facility, other Port property, or the environment.

"Remediate" or **"Remediation"** when used with respect to Hazardous Materials means to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control Hazardous Materials, or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional Port requirements. **"Remediation"** also includes the creation of a remedial work plan to be approved by the appropriate Environmental Regulatory Agency when required.

"Renewable Energy System" is defined in Section 12.3 below.

"Rent" means the Base Rent, Additional Rent and all other sums payable by Tenant to Port hereunder, including, without limitation, any Late Charge and any interest assessed pursuant to Section 5.

"Rent Commencement Date" means the date on which the payment of Rent commences as specified in the Basic Lease Information.

"Repair Period" means two hundred ten (210) days after the date of damage to the Premises or the Facility by fire or other casualty.

"Rules and Regulations" means the Rules and Regulations, if any, applicable to the Facility, as may be amended from time to time.

"saltwater immersion" is defined in Section 28.12 below.

"Security Deposit" means the amount specified in the Basic Lease Information and as further described in Section 7 below.

"Sublease" means a proposed or actual Transfer of all or any part of the Premises under a sublease or a sub-sublease.

"Subletting Expenses" means verifiable, and reasonable brokerage commissions incurred in connection with a Sublease and the costs of any new tenant improvements for which Tenant is responsible under the Sublease.

"SWPPP" is defined in Section 15.10(a) below.

"Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"Tenant" means the party identified as Tenant in the Basic Lease Information.

"Tenant's Property" means all furniture, trade fixtures, office equipment, and articles of movable personal property installed in the Premises by or for the account of Tenant, and any Improvements or Alterations constructed on or affixed to the Premises if designated under this Lease as Tenant's Property, in either case without cost to Port.

"Term" is defined in Section 4.1 below.

"trade fixtures" means those items of personalty, furniture, equipment, machinery used in trade by Tenant which are customarily removed without damage to the Premises at the end of a lease term in the ordinary course of businesses of the type operated by Tenant at the Premises.

"Transfer" means any of the following events or proposed events, whether voluntary, involuntary, or by operation of Law: (a) Tenant sells, assigns, encumbers, subleases, or otherwise transfers any of its interest in this Lease or in the Premises; (b) any Person other than Tenant occupies or claims a right of possession to any part of the Premises; (c) Tenant dissolves, merges, consolidates, or otherwise reorganizes, or sells, assigns, encumbers, or otherwise transfers cumulatively or in the aggregate 50 percent or more (25 percent or more if publicly traded) of its equity interests or business assets, such as goodwill, inventory, and profits; or (d) any subtenant, assignee, or other Transferee of Tenant sells, assigns, encumbers, sub-subleases, or otherwise Transfers any of its interest in its Sublease or premises.

"Transfer Agreement" means all document(s) effecting or evidencing Tenant's proposed sale, assignment, encumbrance, sublease, or other Transfer.

"Transfer Date" means the effective date of a Transfer.

"Transfer Notice" means Tenant's prior written notice to Port of an intent to Transfer to a Non-Affiliate, specifying: (a) the Transferee's name, address, other contact information, and, if the Transferee is not a natural Person, its form of organization and the identity of each Person with Control of the Transferee; (b) the proposed Transfer Date and a full description of the Transfer Terms; (c) a description of the Transferee's proposed use of the Premises, including any required or desired Alterations or Improvements to the Premises that the Transferee may undertake in order to facilitate its proposed use; and (d) a list of the Transferee's personal, business, and credit references.

"Transfer Terms" means the terms and conditions in the proposed or final Transfer Agreement, as appropriate in context.

"Transferee" means the Person to which Tenant makes or proposes to make a Transfer.

"Utilities" means electricity, water, gas, heat, sewers, oil, telecommunication services and all other Utilities.

"Waiving Party" is defined in Section 16.5 below.

"Work" when used in reference to construction is defined in Section 13.2(c) below.

"worth at the time of the reward" is defined in Section 22.2 below.

3. PREMISES; AS-IS CONDITION.

3.1. *Premises.*

(a) Subject to the provisions of this Lease, Port hereby leases to Tenant, and Tenant hereby leases from Port, the Premises in the Facility identified in the Basic Lease Information. The Premises has the address and contains the square footage specified in the Basic Lease Information. The location and dimensions of the Premises are depicted on ***Exhibit A*** attached hereto and incorporated herein by reference (the "***Premises***"). Port and Tenant agree and acknowledge that any statement of rentable or usable (if applicable) square footage set forth in this Lease is an approximation which Port and Tenant agree is reasonable and that the usable square footage of the Premises may be less than the rentable square footage of the Premises. Port and Tenant further agree and acknowledge that the rentable square footage of the Premises shall be used at all times to calculate the Base Rent due and payable by Tenant under this Lease and neither the Base Rent nor any other economic term based on rentable square footage shall be subject to revision whether or not the actual rentable or usable square footage is more or less.

(b) Tenant shall have the non-exclusive right to use, together with other tenants, the Common Areas. All of the Common Areas shall at all times be subject to the exclusive control, regulation, and management of Port. Port shall have the right to construct, maintain, and operate lighting facilities on all Common Areas; to patrol all Common Areas; to temporarily close any Common Areas for maintenance, repairs or alterations; from time to time to change the area, level, location and arrangement of Common Area facilities; to use the Common Areas and restrict access and use of the same during the maintenance, repair, construction or reconstruction of buildings, additions or improvements; to erect buildings, additions and improvements on the Common Areas from time to time; and to restrict parking by tenants, their Agents and Invitees. Port may operate and maintain the Common Areas and perform such other acts and make such other changes at any time and from time to time in the size, shape, location, number and extent of the Common Areas or any of them as Port in its sole discretion shall determine, provided, however, that no exercise by Port of its rights hereunder shall unreasonably restrict access to the Premises.

3.2. *Accessibility Inspection Disclosure*

California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is hereby advised that the Premises have not been inspected by a CASp.

3.3. *No Right to Encroach.*

(a) If Tenant (including, its Agents, Invitees, successors and assigns) uses or occupies space outside the Premises without the prior written consent of Port (the "***Encroachment Area***"), then upon written notice from Port ("***Notice to Vacate***"), Tenant shall immediately vacate such Encroachment Area and pay as Additional Rent for each day Tenant used, occupied, uses or occupies such Encroachment Area, an amount equal to the rentable square footage of the Encroachment Area, multiplied by the higher of the (i) highest rental rate then approved by the San Francisco Port Commission for the Premises or the Facility, or (ii) then current fair market rent for such Encroachment Area, as reasonably determined by Port (the "***Encroachment Area Charge***"). If Tenant uses or occupies such Encroachment Area for a fractional month, then the Encroachment Area Charge for such period shall be prorated based on a thirty (30) day month. In no event shall acceptance by Port of the Encroachment Area Charge be deemed a consent by Port to the use or occupancy of the Encroachment Area by Tenant, its Agents, Invitees, successors or assigns, or a waiver (or be deemed as waiver) by Port of any and all other rights and remedies of Port under this Lease (including Tenant's obligation to Indemnify Port as set forth in the last paragraph of this Section), at law or in equity.

(b) In addition, Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of the initial Notice to Vacate plus the actual cost associated with a survey of the Encroachment Area. In the event Port determines during subsequent inspection(s) that Tenant has failed to vacate the Encroachment Area, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Vacate, if applicable, delivered by Port to Tenant following each inspection. The parties agree that the charges associated with each inspection of the Encroachment Area, delivery of each Notice to Vacate and survey of the Encroachment Area represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises, issuance of each Notice to Vacate and survey of the Encroachment Area. Tenant's failure to comply with the applicable Notice to Vacate and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity.

(c) In addition to Port's rights and remedies under this Section, the terms and conditions of the indemnity and exculpation provision set forth in Section 19 below shall also apply to Tenant's (including, its Agents, Invitees, successors and assigns) use and occupancy of the Encroachment Area as if the Premises originally included the Encroachment Area, and Tenant shall additionally Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Encroachment Area including, without limitation, any loss or liability resulting from any Claims against Port made by any tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Encroachment Area to any such tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

(d) All amounts set forth in this Section shall be due within three (3) business days following the applicable Notice to Vacate and/or separate invoice relating to the actual cost associated with a survey of the Encroachment Area. By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 3.3 and the reasonableness of the amount of the charges described in this Section 3.3.

Initials:

Port

Tenant

3.4. Proximity of Development Project. Tenant acknowledges that during the Term, a Port program or project and/or the Development Project(s) described in the Basic Lease Information, if any, is scheduled to be, or may be, constructed on property in the vicinity of the Premises. Tenant is aware that the construction of such project(s) and the activities associated with such construction will generate certain adverse impacts which may result in some inconvenience to or disturbance of Tenant. Impacts may include, but are not limited to, increased vehicle and truck traffic, traffic delays and re-routing, loss of street and public parking, dust, dirt, construction noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of such inconvenience or disturbance.

3.5. America's Cup. Tenant acknowledges that the Golden Gate Yacht Club has selected San Francisco as the host city for the 34th America's Cup. The selection could result in activities and impacts, all of which are subject to review under the California Environmental Quality Act. The potential activities and impacts include events related to the America's Cup, which will include the 34th America's Cup match, anticipated to occur in 2013, pre-match races, possible future successive defense(s) of the America's Cup, related events and potential long-term development uses, to be determined after the racing events in 2013 (collectively the "Event"). The Event, if held, will be, or may be, on property, including land and water, in the immediate vicinity of the Premises. Tenant is aware that the Event as proposed will include construction projects, racing in the Bay, and public and private events. The activities associated

with the Event, if held, are expected to create certain impacts, some of which may result in some inconvenience to or disturbance of Tenant.

Impacts of the Event may include, but are not limited to, increased pedestrian, vessel, vehicle and truck traffic, traffic delays and re-routing of street traffic, loss of street and public parking, temporary re-routing or interruption of land and water transit, dust, dirt, land- and water-based construction, dredging, and other noise and visual obstructions. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of impacts, inconvenience or disturbance as a result of the Event.

3.6. No Light, Air or View Easement. This Lease does not include an air, light, or view easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands near or adjacent to the Facility or by any vessels berthed near the Facility shall in no way affect this Lease or impose any liability on Port, entitle Tenant to any reduction of Base Rent or Additional Rent, or affect this Lease in any way or Tenant's obligations hereunder.

3.7. Unique Nature of Premises. Tenant acknowledges that: (a) the Facility is located along the waterfront in a building on a pier and/or wharf, supported by a partially-submerged substructure in a marine environment, which was originally built approximately 100 years ago; and/or (b) Port's regular maintenance may involve activities, such as pile driving, that create noise and other effects not normally encountered in locations elsewhere in San Francisco due to the unique nature of the Premises; and (c) Port cannot guarantee that piers, decks, wharves, and aprons will be suitable for leased occupancy during the entire Term of the Lease.

3.8. As-Is Condition. Tenant acknowledges and agrees that Tenant is familiar with the Premises, the Premises are being leased and accepted in their "as-is" condition, without any improvements or alterations by Port, without representation or warranty of any kind, and subject to all applicable laws governing their use, occupancy and possession. Tenant represents and warrants to Port that Tenant has received and reviewed the FEMA disclosure notice attached as *Schedule 3* and a copy of the report(s), if any, relating to the substructure and/or structure of the Facility, as further described in *Schedule 2* attached hereto. Tenant further represents and warrants to Port that Tenant has investigated and inspected, either independently or through agents of Tenant's own choosing, the condition of the Premises and the suitability of the Premises for Tenant's business and intended use. Tenant acknowledges and agrees that neither Port nor any of its agents have made, and Port hereby disclaims, any representations or warranties, express or implied, concerning the rentable area of the premises, the physical or environmental condition of the Premises or the Facility (including, but not limited to the substructure), the present or future suitability of the Premises for Tenant's business, or any other matter whatsoever relating to the Premises, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

3.9. Port's Rights Regarding Premises. Port shall have the full right and authority to make, revoke, impose, and amend any Rules and Regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Facility. If no Rules and Regulations currently exist for the Facility, Tenant agrees to be bound by any Rules and Regulations Port later imposes on the Facility. Tenant also acknowledges that Port's exercise of any of its rights regarding the Premises and other Port property in the vicinity of the Premises will not entitle Tenant to any abatement or diminution of Rent.

4. TERM OF LEASE; TERMINATION BY PORT.

4.1. Term. The term of this Lease (the "Term") shall be for the period of months specified in the Basic Lease Information commencing on the Commencement Date and expiring on the Expiration Date. If the Commencement Date and Expiration Date occur on a date other than the Commencement Date and the Expiration Date set forth in the Basic Lease Information, then promptly following the actual Commencement Date, Port and Tenant shall execute a

Commencement Date and Expiration Date Memorandum substantially in the form attached hereto as **Exhibit B**, confirming the actual Commencement Date and Expiration Date, but either party's failure to do so shall not affect the commencement or expiration of the Term.

If Port is unable to deliver possession of the Premises to Tenant on or before the Commencement Date, then the validity of this Lease shall not be affected thereby and Port shall not be liable to Tenant for any Claims resulting therefrom, and Tenant waives all provisions of any Laws to the contrary. In such case, the Term and regular payments of Rent shall not commence until Port delivers possession of the Premises. Notwithstanding anything to the contrary above, if Port's inability to deliver possession of the Premises on the estimated Commencement Date results from Tenant's or its Agents' acts or omissions, then Base Rent and Additional Rent payable by Tenant hereunder shall commence on the date when Port would have delivered possession of the Premises but for such acts or omissions.

4.2. Termination Rights.

(a) Port has the right to terminate this Lease under this Section when the Premises are needed in connection with a Port program or project. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection, upon thirty (30) days' prior written notice. Tenant agrees and shall be required to surrender possession of the Premises by the end of the 30-day period.

(b) Port has the right to terminate the Lease under this Section if Port determines, in its sole and absolute discretion, that the condition of the Facility's structures, substructure or utilities has deteriorated to a condition that would create a foreseeable risk of hazard to health or safety. Port may exercise this right without liability or expense, except as specifically set forth in this Subsection. Port will attempt to provide Tenant with no less than ninety (90) days' prior written notice of termination under this Subsection, but reserves the right to terminate this Lease upon any shorter notice that the Port in its sole and absolute discretion determines is justified given the risk of hazard. Tenant agrees and shall be required to surrender possession of the Premises by the end of the notice period, except as provided in this Subsection.

(i) For a period ending fifteen (15) calendar days after receipt of Port's notice of termination, Tenant may request Port's consent, in Port's sole and absolute discretion, to allow Tenant to make the repairs required by Port in accordance with this Lease and any additional conditions reasonably imposed by Port, in consideration of Concessions from Port. If Port consents, Port's notice of termination will be deemed rescinded and of no further effect.

(c) Within sixty (60) days after Tenant's surrender under this Section, Port agrees to pay Tenant a portion of those expenses which are documented by Tenant as having been incurred by Tenant prior to the delivery of Port's termination notice in making alterations, additions and improvements to the Premises which were approved in advance and in writing by Port and which were not previously reimbursed to Tenant through rent credits, rent abatement or other form of compensation ("**Improvement Costs**"). Such Improvement Costs shall be determined by the value attributable to any alterations, additions and improvements in any Port building permits for such work obtained by Tenant and which are approved in advance in writing by a Port Property Manager to the extent supported by reasonable evidence of such expenditures provided by Tenant. If no building permits are required for such work, value shall only be attributed to such alterations, additions or improvements if the value is approved in writing by a Port Property Manager prior to the commencement of the work and if the cost is supported by reasonable evidence of such expenditures provided by Tenant. The portion of the Improvement Costs paid by Port shall be a fraction, of which the numerator shall be the number of months remaining in the initial term of the Lease after Tenant surrenders the Premises, and the denominator shall be the number of months in the initial term of this Lease, or for work undertaken following the Commencement Date, the number of months beginning at the second month following the Port's approval of the improvements and ending at the Expiration Date of the initial term of the Lease. In no event shall Port be responsible for paying any moving or

relocation expense or other expense incurred by Tenant due to any termination under this Section.

4.3. Waiver of Relocation Benefits. To the extent allowed by applicable Law, Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §§ 7260 et seq., or under any similar law, statute or ordinance now or hereafter in effect, except as specifically provided this Lease.

Initials:

Port

Tenant

5. RENT.

Tenant shall pay to Port, in the manner herein described, the following Rent:

5.1. Base Rent. Throughout the Term, Tenant shall pay to Port the Base Rent set forth in the Basic Lease Information. Tenant shall make the first payment of Base Rent upon execution of this Lease and from and after the Rent Commencement Date, shall pay the Base Rent, in advance, on or before the first day of each calendar month throughout the Term. If the Rent Commencement Date is other than the first day of the month, or the Expiration Date is other than the last day of the month, the Base Rent for those months shall be apportioned based on a thirty (30) day month.

5.2. Default Interest. Any Rent, if not paid within five (5) days following the due date and any other payment due under this Lease not paid by the applicable due date, shall bear interest from the due date until paid at the Interest Rate. However, interest shall not be payable on Late Charges incurred by Tenant nor on other amounts to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant. Tenant shall also pay any costs, including attorneys' fees incurred by Port by reason of Tenant's failure to pay Rent or other amounts when due under this Lease.

5.3. Late Charges/Habitual Late Payer. Tenant acknowledges that late payment by Tenant to Port of Rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if Tenant fails to pay Rent on the date due, such failure shall be subject to a Late Charge at Port's discretion. Tenant shall also pay any costs including attorneys' fees incurred by Port by reason of Tenant's failure to timely pay Rent. Additionally, in the event Tenant is notified by Port that Tenant is considered to be a Habitual Late Payer, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) upon written notification from Port of Tenant's Habitual Late Payer status. The parties agree that the charges set forth in this Section represent a fair and reasonable estimate of the cost that Port will incur by reason of any late payment. Such charges may be assessed without notice and cure periods and regardless of whether such late payment results in an Event of Default. Payment of the amounts under this Section shall not excuse or cure any default by Tenant.

5.4. Returned Checks. If any check for a payment for any Lease obligation is returned without payment for any reason, Tenant shall pay, as Additional Rent, an amount equal to Fifty Dollars (\$50.00) (as such amount may be adjusted from time to time by the Port Commission) and the outstanding payment shall be subject to a Late Charge as well as interest at the Interest Rate.

5.5. Net Lease. It is the purpose of this Lease and intent of Port and Tenant that all Rent shall be absolutely net to Port, so that this Lease shall yield to Port the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter

arising, and whether or not beyond the present contemplation of the Parties shall Port be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, but except as expressly provided to the contrary in this Lease, Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which Port would otherwise be or become liable by reason of Port's estate or interests in the Premises and any Improvements, any rights or interests of Port in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part, except as otherwise expressly provided in this Lease. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

5.6. Additional Charges. Without limiting Port's other rights and remedies set forth in this Lease, at law or in equity, in the event Tenant fails to submit to the appropriate party, on a timely basis, the items identified in Sections 12.1, 15.4(a), 15.8, 15.10, 28.1(d), and 32 below, or to provide evidence of the required insurance coverage described in Section 16 below, then upon written notice from Port of such failure, Tenant shall pay, as Additional Rent, an amount equaling One Hundred Dollars (\$100.00). In the event Tenant fails to provide the necessary document within the time period set forth in the initial notice and Port delivers to Tenant additional written notice requesting such document, then Tenant shall pay to Port, as Additional Rent, an amount equaling One Hundred Fifty Dollars (\$150.00) for each additional written notice Port delivers to Tenant requesting such document. The parties agree that the charges set forth in this Section 5.6 represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Tenant's failure to provide the documents identified in this Section 5.6 and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 5.6 and the reasonableness of the amount of the charges described in this Section 5.6.

Initials:

Port _____

Tenant _____

6. TAXES AND ASSESSMENTS.

6.1. Payment of Taxes. During the Term, Tenant agrees to pay, when due, to the proper authority any and all real property and personal taxes, general and special assessments, license fees, permit fees and all other governmental charges of any kind or nature whatsoever, including without limitation all penalties and interest thereon, levied or assessed on the Premises, on Tenant's Property, the leasehold or subleasehold estate or Tenant's use of the Premises, whether in effect at the time this Lease is entered into or which become effective thereafter, and all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Premises. Tenant further recognizes and agrees that its leasehold interest may be subject to the payment of special taxes, including without limitation a levy of special taxes to finance energy efficiency, water conservation, water pollution control and similar improvements under the Special Tax Financing Law in Chapter 43 Article X of the Administrative Code. Tenant shall not permit any such taxes, assessments or other charges to become a defaulted lien on the Premises or the Improvements thereon; provided, however, that in the event any such tax,

assessment or similar charge is payable in installments, Tenant may make, or cause to be made, payment in installments; and provided, further, that Tenant may, through such proceeding as Tenant considers necessary or appropriate, contest the legal validity or the amount of any tax, assessment or similar charge so long as such assessment or charge does not become a defaulted lien. In the event of any such dispute, Tenant shall indemnify and hold Port, City, and their Agents harmless from and against all losses, damages, costs, or expenses, including attorneys' fees, resulting therefrom.

6.2. Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by Law, all of which shall be paid when the same become due and payable and before delinquency. Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.38 and 23.39 (or any successor statute) require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the Port to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

Initials: _____

Tenant

7. SECURITY DEPOSIT. Tenant shall pay to Port upon execution of this Lease, in addition to the advance payment of the first month's Base Rent, the Security Deposit, in cash, in the sum specified in the Basic Lease Information, as security for the faithful performance by Tenant of all terms, covenants and conditions of this Lease. If Base Rent is increased beyond the amount set forth in the Basic Lease Information for the last year of the Term, then from and after such increase, Tenant shall increase the amount of the Security Deposit to maintain the same ratio of the Security Deposit to Base Rent as existed on the date immediately prior to such Base Rent increase. Any increase in the Security Deposit shall be delivered to Port on the same date that such increase in Base Rent is first due.

Tenant agrees that Port may (but shall not be required to) apply the Security Deposit in whole or in part to (a) pay any sum due to Port under this Lease; (b) compensate Port for any expense incurred or damage caused by Tenant, its Agents or Invitees; (c) cure any default by Tenant; or (d) cure, or attempt to cure, any failure of Tenant to perform any other covenant, term or condition contained herein. Tenant shall immediately upon demand pay Port a sum equal to the portion of the Security Deposit expended or applied by Port. Port shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to any interest on the Security Deposit. Nothing contained in this Section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

Tenant hereby waives the provisions of California Civil Code Section 1950.7 and/or any successor statute, it being expressly agreed that Port may apply all or any portion of the Security Deposit in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by the act or omission of Tenant or any Agent or Invitee of Tenant, and that following a default by Tenant, all or any portion of the Security Deposit may be retained by Port following a termination of this Lease and applied to future damages, including damages for future Rent, pending determination of the same.

7.1. Environmental Oversight Deposit.

(a) Before the Commencement Date, Tenant must deliver to Port the Environmental Oversight Deposit in cash, in the sum specified in the Summary of Basic Information, as security for Port's recovery of costs of inspection, monitoring, enforcement, and administration during Tenant's operations under this Lease; provided, however, that the Environmental Oversight Deposit will not be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) Port may use, apply, or retain the Environmental Oversight Deposit in whole or in part to reimburse Port for costs incurred if an Environmental Regulatory Agency delivers a notice of violation or order regarding a Hazardous Material Condition ("**Environmental Notice**") to Tenant and either: (i) the actions required to cure or comply with the Environmental Notice cannot be completed within fourteen (14) days after its delivery; or (ii) Tenant has not begun to cure or comply with the Environmental Notice or is not working actively to cure the Environmental Notice within fourteen (14) days after its delivery. Under these circumstances, Port's costs may include staff time corresponding with and responding to Regulatory Agencies, attorneys' fees, and collection and laboratory analysis of environmental samples.

(c) If an Environmental Notice is delivered to Tenant, and Tenant has cured or complied with the Environmental Notice within fourteen (14) days after its delivery, Port may apply the sum of \$500 from the Environmental Oversight Deposit as Additional Rent for each Environmental Notice delivered to Tenant to reimburse Port for its administrative costs.

(d) Tenant must pay to Port immediately upon demand a sum equal to any portion of the Environmental Oversight Deposit Port expends or applies. Provided that no Environmental Notices are then outstanding, Port will return the balance of the Environmental Oversight Deposit, if any, to Tenant within a reasonable time after the expiration or earlier termination of this Lease. Port's obligations with respect to the Environmental Oversight Deposit are those of a debtor and not a trustee, and Port may commingle the Environmental Oversight Deposit or use it in connection with its business.

7.2. Letter of Credit.

(a) Before the Commencement Date, Tenant must deliver to Port a standby letter of credit (the "**Letter of Credit**") in the amount specified in the Letter of Credit section of the Basic Lease Information (the "**LC Value**"), as collateral for the full and faithful performance by Tenant of its obligations under this Lease (the "**Secured Obligations**"). Neither the Letter of Credit nor any portion of the proceeds ("**LC Proceeds**") will be deemed an advance of Rent, an advance of any other payment due to Port under this Lease, a security deposit subject to the California Civil Code, or a measure of Port's damages upon an Event of Default.

(b) The Letter of Credit must:

(i) be in a form acceptable to Port and issued by a nationally-chartered bank with capitalization of at least \$100 million, and otherwise reasonably satisfactory to Port (the "**Issuer**");

(ii) be replaced, renewed, or extended at least sixty (60) days before any expiration date stated in the Letter of Credit, if necessary to ensure that the full LC Value is available to Port at all times until sixty (60) days after the Expiration Date;

(iii) be Issuer's irrevocable, unconditional independent and binding obligation to honor any draw, including partial and multiple draws, presented to Issuer at sight upon the presentation at a branch in San Francisco of Port's signed statement to the Issuer (1) stating that a default of the Secured Obligations has occurred and is continuing under this Lease, and any applicable grace period has expired or Port is otherwise entitled to draw on the Letter of Credit; or (2) requesting an extension of the Letter of Credit's expiration date to the maximum time allowed, or, in the alternative, a draw of the full LC Value, because Tenant has not presented Port with a replacement, renewal, or extension as required under this Section, all in accordance with applicable rules; and

(iv) be freely transferable upon Port's (or Port's successors') delivery of any documents required by Issuer confirming a transfer.

(c) Port may use any portion of LC Proceeds to cure any Tenant default or to compensate Port for any damage Port incurs as a result of Tenant's defaults. If Port makes a draw in any amount, Tenant must deliver to Port an amendment to the Letter of Credit or a replacement Letter of Credit providing Port with the full LC Value within five (5) business days after notice from Port to Tenant specifying the amount of the draw and the particular purpose to which the LC Proceeds were applied.

(d) Tenant agrees that Port:

(i) will not be required to keep LC Proceeds segregated from its other funds or to deposit them into an interest-bearing account;

(ii) may apply all or any portion of the LC Proceeds in payment of any and all sums reasonably necessary to compensate Port for any other loss or damage, foreseeable or unforeseeable, caused by Tenant's default of its Secured Obligations;

(iii) may retain all or any portion of the LC Proceeds following a default by Tenant of its Secured Obligations or a termination of the Lease and apply them to future damages;

(iv) will have until three (3) months after the Expiration Date (or later date of Port's acceptance of Tenant's surrender of the Premises) to return any LC Proceeds drawn but not applied towards Port costs or damages; and

(v) will have no further liability to Tenant with respect to the Letter of Credit or LC Proceeds following a transfer of the beneficial interest to a transferee in accordance with the Issuer's requirements.

7.3. Guaranty. Tenant, at its option, may provide Port with a guaranty in form reasonably acceptable to Port to substitute for all or part of its obligation to provide a Letter of Credit in the LC Value, on the following conditions:

(a) The guarantor must be a person that is not legally obligated under this Lease under applicable Laws; and

(b) The guarantor must have and maintain liquid assets of at least \$ _____ million and a net worth of at least \$ _____ million.

8. USE OF THE PREMISES.

8.1. Permitted Use. The Premises shall be used and occupied only for the Permitted Use specified in the Basic Lease Information and for no other purpose.

8.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "Prohibited Use" and collectively, "Prohibited Uses"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which is not within the Permitted Use;

(b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(c) any activity or object which will overload or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

(e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

(g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

(i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

(j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;

(k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;

(l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(m) the washing of any vehicles or equipment;

(n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or

(o) any other Prohibited Uses identified in the Basic Lease Information, if any.

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event Port determines in subsequent inspection(s) of the Premises that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges

8.2. Prohibited Use. Tenant agrees that the following activities, by way of example only and without limitation, and any other use that is not a Permitted Use (in each instance, a "Prohibited Use" and collectively, "Prohibited Uses"), are inconsistent with this Lease, are strictly prohibited and are considered Prohibited Uses:

(a) any activity, or the maintaining of any object, which is not within the Permitted Use;

(b) any activity, or the maintaining of any object, which will in any way increase the existing rate of, affect or cause a cancellation of, any fire or other insurance policy covering the Premises, any part thereof or any of its contents;

(c) any activity or object which will overload or cause damage to the Premises;

(d) any activity which constitutes waste or nuisance, including, but not limited to, the preparation, manufacture or mixing of anything that might emit any objectionable odors, noises or lights onto adjacent properties, or the use of loudspeakers or sound or light apparatus which can be heard or seen outside the Premises;

(e) any activity which will in any way injure, obstruct or interfere with the rights of other tenants in the Facility or of owners or occupants of adjacent properties, including, but not limited to, rights of ingress and egress;

(f) use of the Premises for residential, sleeping or personal living quarters and/or "Live/Work" space;

(g) any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of Port, which consent may be granted, conditioned, or withheld in the sole and absolute discretion of Port;

(h) the operation, use, or berthing of any vessels, watercraft or floating barges owned or operated by Tenant;

(i) Tenant's employment of any maritime workers within the Premises for loading, unloading, building, repairing, dismantling, or longshoring of any vessel;

(j) any vehicle and equipment maintenance, including but not limited to fueling, changing oil, transmission or other automotive fluids;

(k) the storage of any and all excavated materials, including but not limited to dirt, concrete, sand, asphalt, and pipes;

(l) the storage of any and all aggregate material, or bulk storage, such as wood or of other loose materials;

(m) the washing of any vehicles or equipment;

(n) the placement of any object, machinery or equipment on any portion of the Premises that exceeds the load restrictions, if any, described in the Basic Lease Information; or

(o) any other Prohibited Uses identified in the Basic Lease Information, if any.

8.3. Notice of Prohibited Use Charge. In the event Port determines after inspection of the Premises that Prohibited Uses are occurring on the Premises, then Tenant shall immediately cease the Prohibited Use and shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200.00) upon delivery of written notice to Tenant to cease the Prohibited Use ("Notice to Cease Prohibited Use"). In the event Port determines in subsequent inspection(s) of the Premises that Tenant has not ceased the Prohibited Use, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300.00) for each additional Notice to Cease Prohibited Use delivered to Tenant. The parties agree that the charges

associated with each inspection of the Premises and delivery of the Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and Tenant's failure to comply with the applicable Notice to Cease Prohibited Use and that Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this Lease, at law or in equity.

By placing their initials below, each party specifically confirms the accuracy of the statements made in this Section 8.3 and the reasonableness of the amount of the charges described in this Section 8.3.

Initials:

Port

Tenant

9. COMPLIANCE WITH LAWS AND REGULATIONS.

Tenant, at Tenant's sole cost and expense, promptly shall comply with all Laws relating to or affecting the condition, use or occupancy of the Premises and shall comply with all Laws relating to Tenant's specific use of the Facility and all Rules and Regulations, if any, in effect either at the time of execution of this Lease or which may hereafter be in effect at any time during the Term, whether or not the same are now contemplated by the parties. Tenant further understands and agrees that it is Tenant's obligation, at Tenant's sole cost and expense, to cause the Premises and Tenant's activities and operations conducted thereon, to be in compliance with the ADA. Tenant shall be solely responsible for conducting its own independent investigation of this matter and for ensuring that the design of all Alterations and Improvements strictly complies with all requirements of the ADA. If Tenant's use or occupancy of the Premises triggers a requirement to remove barriers or perform other work to any part of the Facility outside of the Premises to comply with the ADA, then, at Port's sole election, Port or Tenant will perform the work at Tenant's sole cost and expense.

The parties acknowledge and agree that Tenant's obligation to comply with all Laws as provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section 9 shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises, regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or Port, the degree to which the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Laws involved, and whether the Laws involved is related to Tenant's particular use of the Premises. Any Alteration or Improvements made by or on behalf of Tenant pursuant to the provisions of this Section 9 shall comply with the provisions of Section 13 below. Except as otherwise expressly set forth in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to seek redress against Port, except to the extent Tenant may have remedies against Port pursuant to this Lease or applicable Law. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel Port to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

10. PORT ACTING AS OWNER OF PROPERTY; REGULATORY APPROVALS; COMPLIANCE WITH CITY'S RISK MANAGER'S REQUIREMENTS.

10.1. *Port Acting as Owner of Property.* Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a Regulatory Agency of the City with certain police powers. By entering into this

Lease, Port is in no way modifying or limiting the obligation of Tenant to obtain any required Regulatory Approvals from Regulatory Agencies, and to cause the Premises to be used and occupied in accordance with all Laws and required Regulatory Approvals. Examples of Port actions as a Regulatory Agency include Port Commission approval of entitlements to develop Port property, Port staff issuance of building and other construction-related permits, Port staff issuance of licenses and regulation of certain sidewalks and streets, and the Chief Harbor Engineer's actions to protect public health and safety.

10.2. Regulatory Approvals. Tenant understands that Tenant's operations on the Premises, changes in use, or Improvements or Alterations to the Premises (individually and collectively, "**Changes**") may require Regulatory Approvals, including Regulatory Approvals issued by Port in its capacity as a Regulatory Agency.

Tenant shall be solely responsible for obtaining any Regulatory Approvals, and Tenant shall not seek any Regulatory Approval without first obtaining the prior written approval of Port. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne solely and exclusively by Tenant. Tenant shall be solely responsible for complying with any and all conditions imposed by Regulatory Agencies as part of a Regulatory Approval; provided, however, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit or other entitlement from any Regulatory Agency (other than Port), if the Port is required to be a co-permittee under such permit or other entitlement, or if the conditions or restrictions it would impose on the project could affect use or occupancy of the Facility or Port's interest therein or would create obligations on the part of Port (whether on or off of the Premises) to perform or observe, unless in each instance Port has previously approved such conditions in writing, in Port's sole and absolute discretion.

Any fines or penalties imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval shall be promptly paid and discharged by Tenant, and Port shall have no liability, monetary or otherwise, for any fines and penalties. To the fullest extent permitted by Law, Tenant agrees to indemnify and hold City, Port and their Agents harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approval.

Without limiting the terms and conditions of Sections 10.1 and 10.2, by initialing below, Tenant agrees and acknowledges that (i) Port has made no representation or warranty that Regulatory Approvals to allow for the Changes, if any, can be obtained, (ii) although Port is an agency of the City, Port has no authority or influence over any Regulatory Agency responsible for the issuance of such required Regulatory Approvals, (iii) Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Facility and not as a Regulatory Agency of the City with certain police powers, and (iv) Tenant is solely responsible for obtaining any and all required Regulatory Approvals in connection with any Changes. Accordingly, Tenant understands that there is no guarantee, nor a presumption, that any required Regulatory Approvals will be issued by the appropriate Regulatory Agency and Port's status as an agency of the City shall in no way limit the obligation of Tenant to obtain approvals from any Regulatory Agencies (including Port) that have jurisdiction over the Facility. Tenant hereby releases and discharges Port from any liability relating to the failure of any Regulatory Agency (including Port) from issuing any required Regulatory Approval.

Initials:

Tenant

10.3. Compliance with City's Risk Manager's Requirements. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase rates under a standard form fire insurance policy or subject Port to potential premises liability. Tenant shall faithfully observe, at no cost to Port, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such

requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords.

11. MAINTENANCE AND REPAIRS.

11.1. *Tenant Maintenance and Repair Obligations.* Unless otherwise set forth in the Basic Lease Information, Tenant shall at all times during the Term, including any period of early entry if any under this Lease, or occupancy or use of the Premises by Tenant under another lease or license with Port, and at its sole cost and expense, maintain, repair and replace in good and working order, condition and repair the Premises and all Improvements and Alterations thereon, including, but not limited to, glazing. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the Premises nor to any Improvements or Alterations now or hereafter located thereon. Tenant hereby waives all rights to make repairs at Port's expense under Sections 1932(1), 1941 and 1942 of the California Civil Code or under any similar Law now or hereafter in effect.

Notwithstanding any maintenance obligations of Port that may be set forth in the Basic Lease Information, in the event that Tenant, its Agents or Invitees cause any damage to the Premises or any other property within Port's jurisdiction, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefor. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by an applicable building code, standard or regulation, including, without limitation, the Port Building Code, the Port Facility Code, or of any rule or regulation of Port without first obtaining Port's prior written consent and a permit therefor.

11.2. *Port's Right to Inspect.* In the event that damage or deterioration to the Premises or any portion thereof which is Tenant's obligation to maintain results in the same not meeting the standard of maintenance required by Port for such uses as Tenant is making of the Premises, then Tenant shall have the independent responsibility for, and shall promptly undertake, maintenance or repair of the Premises and complete the same with due diligence. Without limiting Section 24 below, Port may make periodic inspections of the Premises and may advise Tenant when maintenance or repair of the Premises is required, but such right of inspection shall not relieve Tenant of its independent responsibility to maintain such Premises and Improvements in a condition as good as, or better than, their condition at the Commencement Date, excepting ordinary wear and tear.

11.3. *Port's Right to Repair.* In the event Tenant fails to maintain the Premises in accordance with Sections 11.1, 11.2 or 12.1, or Tenant fails to promptly repair any damage to the Facility or the Facility Systems caused by Tenant or its Agents, Port may repair the same at Tenant's sole cost and expense and Tenant shall immediately reimburse Port therefore. If the cost (including, but not limited to, salaries of Port staff and attorneys' fees) of any such repairs or replacements made at Tenant's expense is in excess of Two Thousand Dollars (\$2,000), then Tenant shall pay to Port an administrative fee equal to ten percent (10%) of the total "**Hard costs**" of the work. "**Hard costs**" shall include the cost of materials and installation, but shall exclude any costs associated with design, such as architectural fees.

With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000), Tenant shall pay to Port, as Additional Rent, an amount equaling Two Hundred Dollars (\$200) upon delivery of the initial notice relating to Tenant's failure to maintain the Premises in accordance with Section 11 ("**Maintenance Notice**"). In the event Port determines during subsequent inspection(s) that Tenant has failed to maintain the Premises in accordance with Section 11, then Tenant shall pay to Port, as Additional Rent, an amount equaling Three Hundred Dollars (\$300) for each additional Maintenance Notice, if applicable, delivered by Port to Tenant following each inspection. Parties agree that the charges associated with each inspection of the Premises and delivery of each Maintenance Notice represent a fair and reasonable estimate of the administrative cost and expense which Port will incur by reason of Port's inspection of the Premises and issuance of each Maintenance Notice. Tenant's failure to

comply with the applicable Maintenance Notice and Port's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights and remedies of Port under this Lease, at law or in equity. The amounts set forth in this Section 11.3 shall be due within three (3) business days following delivery of the applicable Maintenance Notice.

Initials:

Tenant

For purposes of this Lease, the term "**ordinary wear and tear**" shall not include any deterioration in the condition or diminution of the value of any portion of the Premises and/or the Facility in any manner whatsoever related to directly, or indirectly, to Tenant's failure to comply with the terms and conditions of this Lease.

11.4. Acts of Nature. Nothing contained herein shall require Port to repair or replace the Premises or the Improvements thereon as a result of damage caused by acts of war, earthquake, tidal wave or other acts of nature, except that this provision shall not affect any obligation to make repairs to the Premises pursuant to Section 17 in the event of any damage or destruction of the Premises.

11.5. Dredging. Tenant shall be solely responsible for any dredging and dredging-related activities required in connection with its operations, including areas outside of the Premises necessary to provide access to the Premises (the "**Dredging Work**"), and for all costs associated with the Dredging Work, including hydrographic surveys, pre-dredge testing, sampling, chemical analyses, bioassays permitting, and all consultant and dredging contracting. Tenant shall also promptly provide to and at no cost to Port, copies of all pre-dredge and post-dredge surveys, submittals to Regulatory Agencies, soundings, reports, data, and any other information obtained in connection with the Dredging Work. Tenant shall be responsible for testing, sampling, removing, and disposing of the sediment, debris, and other materials dredged from the Bay all in accordance with this Lease. Dredging Work shall be performed in accordance with the requirements of the permit issued to Tenant by the Dredged Material Management Office ("**DMMO**").

For purposes of this Section 11, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

12. UTILITIES AND SERVICES.

12.1. Utilities. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all Utilities to be furnished on, in or to the Premises or to be used by Tenant. Tenant will procure all electricity for the Premises from the San Francisco Public Utilities Commission at rates to be determined by the SF Public Utilities Commission. If the SF Public Utilities Commission is unable to meet Tenant's requirements for load, or its price and rates are materially higher than rates available to Tenant from Pacific Gas and Electric Co. or on the open market, Tenant may seek another provider.

Tenant shall be obligated, at its sole cost and expense, to repair and maintain in good operating condition all utilities serving the Premises (whether within or outside the Premises and regardless of who installed same). The obligation to repair and maintain includes the obligation to routinely inspect and assess such Utilities using qualified licensed professionals and to report the results of such inspections to Port. Tenant shall coordinate with Port and impacted Port tenants, if necessary, with respect to maintenance and repair of any off-Premises utility infrastructure, including providing advance notice of maintenance and repair requirements. If Tenant requests Port to perform such maintenance or repair, whether emergency or routine, Port shall charge Tenant for the cost of the work performed at the then prevailing standard rates, and Tenant agrees to pay Port promptly upon billing. Tenant shall pay for repair of utilities located outside the Premises (regardless of who installed the same) which are damaged by or adversely affected by Tenant's use of such utility and shall be responsible for all damages, liabilities and claims arising therefrom.

Tenant will not, without the written consent of Port, which consent may be granted or withheld in Port's sole and absolute discretion, use any apparatus or device in the Premises, including without limitation, electronic data processing machines and machines using current in excess of 110 volts or which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises. If Tenant shall require electric current in excess of that usually furnished or supplied for the Premises, Tenant shall first procure the written consent of Port, which Port may refuse, in its sole and absolute discretion, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for solely by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by the meter, at the rates charged for such service by the City and County of San Francisco or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed.

The parties agree that any and all utility improvements (not including telephone wiring and equipment) shall become part of the realty and are not trade fixtures or Tenant's Property. Port makes no representation or warranty that utility services, including telecommunications services, will not be interrupted. Port shall not be liable in damages or otherwise for any failure or interruption of any utility services, including telecommunications services, furnished to the Premises. No such failure or interruption shall constitute a basis for constructive eviction, nor entitle Tenant to terminate this Lease or abate Rent. Tenant hereby waives the provisions of California Civil Code Section 1932(1), 1941, and 1942, or any other applicable existing or future Laws permitting the termination of this Lease due to such interruption, failure or inability.

In the event any Law imposes mandatory or voluntary controls on Port, the Facility, or the property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event Port is required or elects to make alterations to any part of the Facility in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Rent reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. Port shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

Without Port's prior written consent, which Port may give or refuse in its sole and absolute discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Facility or the pier, as applicable, and as may be further described in the Basic Lease Information. If Port consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the Port, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Port and otherwise in compliance with Section 13 below, to the extent necessary to assure that no damage to the Premises or the Facility or weakening of any structural or substructural supports, as the case may be, will be occasioned thereby.

12.2. Services. Except as may be otherwise provided in the Basic Lease Information, Tenant shall make arrangements and shall pay all charges for all services to be furnished on, in or to the Premises or to be used by Tenant, including, without limitation, garbage and trash collection, janitorial service and extermination service.

12.3. On-Site Renewable Energy. At any time during the Term, Port shall have the right, at its sole and absolute discretion, to install, or cause another party to install, a renewable energy system, using sources such as solar (photovoltaic or solar thermal power), wind, tidal or

biofuel power ("**Renewable Energy System**") on the roof of the Facility or otherwise on or near the Premises for the purpose of supplying power to the Facility or other locations. Notwithstanding Section 12.1, unless the cost per kilowatt of power to Tenant from such Renewable Energy System is greater than the cost per kilowatt Tenant would otherwise pay for power, Tenant shall purchase all or a portion of its power needs from the operator of the Renewable Energy System.

Initials:

Tenant

13. IMPROVEMENTS AND ALTERATIONS.

13.1. Port Consent Required.

(a) Tenant shall not make nor cause or suffer to be made, any Alterations or Improvements to the Premises (i) without the prior written consent of Port, which consent shall not be unreasonably withheld; provided, however, that Port shall have the right in its sole and absolute discretion to consent or to withhold its consent to any Alterations or Improvements which affect the structural portions of the Premises, the Facility or the Facility Systems, and (ii) until Tenant shall have procured and paid for all Port and other Regulatory Approvals of the various Regulatory Agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(b) As a condition to giving consent, Port may require Tenant to provide Port, at Tenant's sole cost and expense, one or more financial guarantees, each in a form and issued by a bank or surety acceptable to Port, such as: (i) a standby letter of credit or bond; and (ii) a payment and performance bond from Tenant's Contractors naming Port as co-obligee, each in a principal amount up to one hundred fifty percent (150%) but not less than one hundred percent (100%) of the estimated costs of the Alteration or Improvement, to ensure Port against any liability for mechanics' and materialmen's liens, stop notices and to ensure completion of work.

(c) At least thirty (30) days before commencing any Alterations or Improvements to the Premises, Tenant shall notify Port. Tenant's notice shall be accompanied by Final Construction Documents for the Alterations or Improvements, if applicable. Port shall have the right to object to any the Alterations or Improvements within sixty (60) days after receipt of notice from Tenant. Port's failure to notify Tenant of Port's objection within the 60-day period shall be deemed Port's disapproval of the Alterations.

(d) None of the following will constitute Alterations or Improvements requiring Port's consent, unless the installation will affect Facility Systems or the structure of the building: (i) installation of furnishings, trade fixtures, equipment, or decorative improvements; (ii) painting the interior of the Premises; and (iii) carpeting the Premises.

13.2. Construction Requirements. All Alterations and Improvements to the Premises made by or on behalf of Tenant shall be subject to the following conditions, which Tenant covenants faithfully to perform:

(a) All Alterations and Improvements shall be performed in a good and workmanlike manner in accordance with plans and specifications previously approved by Port in writing and in compliance with the applicable building, zoning and other applicable Laws, including, but not limited to, compliance with the ADA, and in compliance with the terms of and conditions imposed in any Regulatory Approval or any permit or authorization for the Premises.

(b) All Alterations and Improvements shall be performed at the sole cost and expenses of Tenant, with reasonable dispatch and prosecuted to completion, and only by duly licensed and bonded contractors or mechanics approved by Port, and subject to any conditions that Port may reasonably impose.

(c) Tenant, while performing any subsequent construction or maintenance or repair of the Improvements (for purposes of this Section only, "Work"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by the Work and make adequate provision for the safety and convenience of all persons affected by the Work. Dust, noise and other effects of the Work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant shall erect appropriate construction barricades substantially enclosing the area of such construction and maintain them until the Work has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(d) At the completion of any Work described in this Section, Tenant shall furnish to Port one reproducible "as built" drawing of all Alterations and Improvements made in the Premises. If Tenant fails to provide such as-built drawings to Port within sixty (60) days after completion of the Improvements, Port, after giving notice to Tenant shall have the right, but not the obligation, to cause the preparation by an architect of Port's choice of "as-built" drawings, at Tenant's sole cost, to be paid by Tenant to Port within thirty (30) days after Port's request therefor.

(e) Tenant expressly acknowledges that the facility is a contributing resource to the Embarcadero National Register Historic District. Accordingly, all interior and exterior Alterations (including but not limited to any repair, alteration, improvement, or construction to the interior or exterior of the Facility) are subject to review by Port for consistency with the design policies and criteria set forth in the Waterfront Land Use Plan, Design and Access Element, the Secretary of the Interior's Standards for the Treatment of Historic Properties, which are published by the National Park Service and posted on its website at <http://www.nps.gov/history/hps/tps/Standards/index.htm> (the "Secretary's Standards"), and the Port of San Francisco Historic Preservation Review Guidelines for Pier and Bulkhead Wharf Substructures attached hereto as **Exhibit E** ("Port's Guidelines"). Tenant expressly agrees to comply with the Secretary's Standards for all current and future interior and exterior repair, alteration, improvement or construction. Additionally, Tenant expressly agrees to comply with Port's Guidelines as applicable.

(f) Without limiting Section 15 below (Hazardous Materials), in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and Improvements and any asbestos related work, as further defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Sections 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations or Improvements affecting ACM-containing areas or any asbestos related work shall be performed without Port's prior written consent in each instance.

(g) Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3423, and all other Laws, including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of Alterations or Improvements disturbs or removes lead-based or presumed lead-based paint (as described below). Tenant and its Agents or Invitees shall give to Port three (3) business days prior written notice of any disturbance or removal of lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees,

when disturbing or removing lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers, without Port's prior written consent; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool, without Port's prior written consent; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the interior and exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3423 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the surfaces of such buildings. Under this Section 13.2(g), lead-based paint is "**disturbed or removed**" if the work of Alterations or Improvements involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an interior or exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

13.3. Improvements Part of Realty. Except as set forth in Section 13.4 below, all Alterations and Improvements constructed on or affixed to the Premises by or on behalf of Tenant shall immediately upon construction or installation become part of the realty owned by Port and shall, at the end of the Term hereof, remain on the Premises without compensation to Tenant. Tenant may not remove any such property at any time during or after the Term unless Port so requires as further provided in Section 25 (Surrender).

13.4. Removal of Improvements. Prior to the Expiration Date or earlier termination of this Lease, Port shall give written notice to Tenant (herein "**Notice of Removal**") specifying the Alterations or Improvements that are designated as Tenant's Property as defined in this Lease or as may be specifically provided in the relevant permits or plans approved by Port, which Tenant shall be required to remove and relocate or demolish and remove from the Premises in accordance with Section 25. Any such removal is subject to the requirements of this Section, including the requirement to obtain a Port building or similar permit. If termination of this Lease is the result of loss or destruction of the Premises or any Improvements thereon, Port shall deliver the Notice of Removal to Tenant within a reasonable time after the loss or destruction. Tenant shall be obligated at its own expense to remove all Alterations or Improvements specified in the Notice of Removal, including without limitation all telephone wiring and equipment installed by Tenant. Tenant shall promptly repair, at its own expense, in good and workmanlike fashion any damage occasioned thereby. If Tenant fails to complete any required demolition or removal on or before the termination of this Lease, Port may perform such removal or demolition at Tenant's expense, and Tenant shall reimburse Port within three (3) business days after demand therefor.

13.5. Removal of Non-Permitted Improvements. If Tenant constructs any Alterations or Improvements without Port's prior written consent or without complying with Section 13.2 above, then, in addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all such Alterations or Improvements and to promptly repair, at Tenant's expense and in good workmanlike fashion, any damage occasioned thereby. Tenant shall pay to Port all special inspection fees as set forth in any applicable building code, standard or regulation, including, without limitation, the Port Building Code, for inspection of work performed without required permits. The foregoing obligation of Tenant to reimburse Port for all cost and expenses incurred by Port in connection with Tenant's failure to comply with the provisions of Section 13 shall survive the expiration or earlier termination of this Lease.

13.6. Signs. Tenant shall not install business signage, awnings or other exterior decoration or notices on the Premises without Port's prior written consent. Any sign that Tenant is permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including but not limited to Port's Tenant Sign Guidelines and building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approval.

Tenant, at its sole cost and expense, shall remove all signs placed by it on the Premises at the expiration or earlier termination of this Lease.

13.7. Improvements on Roof. Tenant shall not install any equipment on the roof or any other part of the Facility outside of the Premises without Port's prior written consent. If Port consents, then Tenant shall have a non-exclusive revocable license on and over the roof and/or other areas of the Facility necessary to install, maintain and repair the equipment in a location mutually agreeable to Port and Tenant, subject to and consistent with all necessary Regulatory Approvals, including a building or encroachment permit issued by Port. Port makes no representation with respect to Tenant's ability to obtain such Regulatory Approvals. Tenant's use of any licensed areas shall be subject to all the terms and conditions of this Lease and Tenant shall have the obligations and liabilities as if the licensed areas are included in the Premises under this Section, and Sections 3.7, 9-11, 13, 15, 16, 19 and 25 of this Lease. The license granted to Tenant hereunder is for the sole purpose of constructing, maintaining, restoring, replacing and operating Tenant's approved equipment, including any necessary conduits, only in connection with Tenant's Permitted Uses under this Lease and Tenant shall not have the right to install any other equipment outside of the Premises, including without limitation a telecommunications (cell) site or any other equipment that can be used for any commercial purpose. The license granted hereby includes the right of ingress and egress through the Facility during non-business hours for access to or from the Premises and Tenant's equipment, provided that Tenant must notify the Port's designated person set forth above at least 24 hours in advance of any access and shall comply with all reasonable requirements of such designated person with respect to Tenant's requested access. In the event of an emergency, Tenant shall have the right to enter the licensed areas provided it makes good faith efforts if possible to notify Port in advance of such entry.

13.8. Port's Alterations. Port reserves the right at any time to make Alterations, additions, repairs, deletions or improvements to the Common Areas or any other part of the Facility, the Facility Systems, or adjacent Port property ("**Port Work**"). Port shall use commercially reasonable efforts to conduct any of the foregoing activities in a manner that, to the extent reasonably practicable, will minimize inconvenience or disturbance to Tenant; Port will have no obligation to minimize inconvenience or disturbance to Tenant for Port Work when the Port Work is necessary, in Port's sole and absolute discretion, to maintain Port property in safe, hazard-free condition. In no event will inconvenience or disturbance caused by Port Work constitute an actual or constructive eviction of Tenant, entitle Tenant to any abatement or diminution of Rent, or otherwise relieve Tenant from any of its obligations under this Lease. Tenant hereby waives any and all Claims against Port, City and their Agents arising out of any inconvenience or disturbance occasioned by Port Work.

14. LIENS.

Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant or its Agents. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by Port for such purpose, plus interest at the Interest Rate, and all reasonable expenses incurred by Port in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Port by Tenant upon demand. Port shall have the right to post on the Premises any notices that Port may deem proper for the protection of Port, the Premises, and the Facility, from mechanics' and materialmen's liens. Tenant shall give to Port at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold Port, City and their respective Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection

with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

Without limiting the foregoing, Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Facility or Port's interest therein or under this Lease.

15. HAZARDOUS MATERIALS.

15.1. *Requirements for Handling.* Neither Tenant nor its Agents or Invitees may Handle or permit any other person to Handle any Hazardous Material in, on, under or about the Premises, any other part of the Facility, or other Port property, subject only to the following exceptions, provided that Handling is at all times in full compliance with all Environmental Laws: janitorial and office supplies in limited amounts customarily used for general office purposes.

15.2. *Tenant Responsibility.* Tenant agrees to protect its Agents and Invitees in its operations on the Premises from hazards associated with Hazardous Materials in accordance with all Environmental Laws and also agrees, for itself and on behalf of its Agents and Invitees, that during its use and occupancy of the Premises, each of them:

- (a) will not permit any Hazardous Materials to be present in, on, under or about the Premises, any other part of the Facility, or other Port property except as permitted under Section 15.1;
- (b) will not cause or permit any Hazardous Material Condition; and
- (c) will comply with all Environmental Laws relating to the Premises and any Hazardous Material Condition, and will not engage in or permit any activity at the Premises, any other part of the Facility, other Port property, or in the operation of any vehicles or vessels used in connection with the Premises in violation of any Environmental Laws.

15.3. *Tenant's Environmental Condition Notification Requirements.*

(a) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, of and when Tenant learns or has reason to believe Hazardous Materials were Released or, except as allowed under Section 15.1, Handled, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels that Tenant or its Agents or Invitees use during Tenant's occupancy of the Premises, whether or not the Release or Handling is in quantities that would be required under Environmental Laws to be reported to an Environmental Regulatory Agency.

(b) Tenant must notify Port immediately, orally or by other means that will transmit the earliest possible notice to Port staff, followed within twenty-four (24) hours by written notice, and contemporaneously provide Port with an electronic copy, of:

(i) Any notice of the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises that Tenant or its Agents or Invitees provides to an Environmental Regulatory Agency;

(ii) Any notice of a violation, or a potential or alleged violation, of any Environmental Law that Tenant or its Agents or Invitees receives from any Environmental Regulatory Agency;

(iii) Any other Environmental Regulatory Action that is instituted or threatened by any Environmental Regulatory Agency against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises,

the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises;

(iv) Any Hazardous Materials Claim that is instituted or threatened by any third party against Tenant or its Agents or Invitees and that relates to the Release or Handling of Hazardous Materials, in, on, or about the Premises, the Facility, other Port property, or the environment, or from any vehicles or vessels Tenant, or its Agents and Invitees uses during Tenant's occupancy of the Premises; and

(v) Any notice of the termination, expiration, or substantial amendment of any Environmental Regulatory Approval needed by Tenant or its Agents or Invitees for their operations at the Premises.

(c) Tenant must notify Port of any meeting, whether conducted face-to-face or telephonically, between Tenant and any Environmental Regulatory Agency regarding an Environmental Regulatory Action. Port will be entitled to participate in any such meetings at its sole election.

(d) Tenant must notify Port of any Environmental Regulatory Agency's issuance of an Environmental Regulatory Approval. Tenant's notice to Port must state the issuing entity, the Environmental Regulatory Approval identification number, and the date of issuance and expiration of the Environmental Regulatory Approval. In addition, Tenant must provide Port with a list of any plan or procedure required to be prepared and/or filed with any Environmental Regulatory Agency for operations on the Premises, including a "Spill Pollution Control and Countermeasure Plan." Tenant must provide Port with copies of any of the documents within the scope of this section upon Port's request.

(e) Tenant must provide Port with copies of all communications with Environmental Regulatory Agencies and all non-privileged communications with other persons regarding potential or actual Hazardous Materials Claims arising from Tenant's or its Agents' or Invitees' operations at the Premises. Upon Port's request, Tenant must provide Port with a log of all communications withheld under a claim of privilege that specifies the parties to and subject of each withheld communication.

(f) Port may from time to time request, and Tenant will be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner that complies with all Environmental Laws.

15.4. Requirement to Remediate.

(a) Tenant's Remediation obligations under this subsection are subject to subsection (b).

(i) After notifying Port in accordance with Section 15.3(a), Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease, any Hazardous Material Condition occurring during the Term or while Tenant or its Agents or Invitees otherwise occupy any part of the Premises. Tenant must obtain Port's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following Port's approval of the work plan and continue diligently until Remediation is complete, as determined by Port, in its sole discretion.

(ii) In addition to its obligations under clause (i), before this Lease terminates for any reason, Tenant must Remediate at its sole cost in compliance with all Environmental Laws and this Lease: (A) any Hazardous Material Condition caused by Tenant's or its Agents' or Invitees' Handling Hazardous Materials during the Term; and (B) any Hazardous Material Condition discovered during Tenant's occupancy that any Regulatory Agency requires to be Remediated if Remediation would not have been required but for Tenant's use of or Changes to the Premises.

(iii) If Environmental Laws governing Remediation require a remedial action plan, Tenant must provide a draft of its plan to Port for comment and approval before submittal to the appropriate Environmental Regulatory Agency, and a copy of the final plan as submitted.

(iv) In all situations relating to Handling or Remediating Hazardous Materials, Tenant must take all actions that are reasonably necessary in Port's sole judgment to protect the value of the Premises or the Facility, such as obtaining Environmental Regulatory Approvals related to Hazardous Materials and taking measures to remedy any deterioration in the condition or diminution of the value of any portion of the Premises or the Facility in any manner related directly, or indirectly to Hazardous Materials.

(b) Unless Tenant or its Agents or Invitees Exacerbate the Hazardous Material Condition, Tenant will not be obligated to Remediate any Hazardous Material Condition: (i) caused solely by City, Port, or their Agents during Tenant's occupancy of the Premises; or (ii) arising before the Commencement Date or the date of Tenant's first use of the Premises, whichever is earlier.

15.5. Port's Right to Audit. Port will have the right, but not the obligation, to inspect and audit the Premises for any Hazardous Materials, including the right to Investigate, at reasonable times under Section 24. Port's failure to inspect or obtain samples or to detect conditions attributable to Tenant's operations if an inspection is conducted may not be deemed to be a release of any liability for any Hazardous Materials subsequently determined to be Tenant's responsibility under this Lease.

15.6. Notification of Asbestos. Port hereby notifies Tenant, in accordance with the United States Occupational Safety and Health Administration ("OSHA") Asbestos Rule (1995), 59 Fed. Reg. 40964, 29 CFR §§ 1910.1001, 1926.1101 (as amended, clarified and corrected) (OSHA Asbestos Rule); California Health and Safety Code §§ 25915-259.7 and the Division of Occupational Safety and Health of the California Department of Industrial Relations ("Cal-OSHA") General Industry Safety Order for Asbestos, 8 CCR § 5208, of the presence of asbestos-containing materials ("ACMs") and/or presumed asbestos-containing materials ("PACMs") (as such terms are defined in Cal-OSHA General Industry Safety Order for Asbestos), in the locations identified in the summary/table, if any, set forth in *Schedule 1* attached hereto.

This notification by Port is made pursuant to a building inspection survey(s), if any, performed by Port or its contractors qualified to perform an asbestos building survey identified in the summary/table, if any, set forth in *Schedule 1* attached hereto. Such survey(s), monitoring data and other information are kept at Port of San Francisco, Pier 1, San Francisco, California, 94111 and are available for inspection upon request.

Tenant hereby acknowledges receipt of the notification specified in the first paragraph of Section 15.6 hereof and the notice or report attached as *Schedule 1* hereto and understands, after having consulted its legal counsel, that it must make its employees and contractors aware of the presence of ACMs and/or PACMs in or about the Premises in order to avoid or minimize any damage to or disturbance of such ACMs and/or PACMs. Tenant further acknowledges its obligations under Cal-OSHA General Industry Safety Order for Asbestos to provide information to its employees and contractors regarding the presence of ACMs and PACMs at the Premises and to provide a training program for its employees that conforms with 8 CCR § 5208(j)(7)(C).

Tenant agrees that its waiver of Claims set forth in Section 19 below (Indemnity and Exculpation) is given with full knowledge of the presence, or possibility, of asbestos in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of asbestos in or about the Premises may limit Tenant's ability to construct Alterations to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the asbestos in the Facility, whether in the Premises or

elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

Notwithstanding any other provisions of this Lease, Tenant agrees to defend and indemnify Port for Tenant's acts or omissions that result in (1) asbestos-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA General Industry Safety Order for Asbestos and/or exposures to asbestos.

15.7. Notification of Lead. Port hereby notifies Tenant of the potential presence of lead-containing and presumed lead-containing materials in the Premises or Facility. Disturbance or removal of lead is regulated by among other Laws, 29 CFR §§ 1910.1025, 1926.62; California Health & Safety Code §§ 105185-105197 and 105250-105257; Cal-OSHA Construction Safety Order for Lead, Title 8 CCR § 1532.1; Title 17 CCR Chapter 8; and San Francisco Building Code § 3423.

Tenant agrees that its waiver of Claims set forth in Section 19 below is given with full knowledge of the presence, or possibility, of lead in or about the Premises and/or the Facility and the potential consequences of such fact. Tenant is aware that the presence, or possibility, of lead in or about the Premises may limit Tenant's ability to perform any Improvements or Alterations to the Premises without Tenant first performing abatement of such lead. The presence of lead in the Premises and/or the Facility and the removal or non-removal by Port of all or a portion of the lead, whether in the Premises or elsewhere in the Facility, shall not, however, (i) entitle Tenant to any Claim, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay Rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises. Notwithstanding any other provisions of this Lease, Tenant agrees to defend and indemnify Port for its acts or omissions that result in (1) lead-related enforcement actions, including both administrative or judicial proceedings, and (2) any Claims arising from an alleged violation of Cal-OSHA Construction Safety Order for Lead and/or exposures to lead.

15.8. Failure to Comply. Failure to comply with Section 15 shall constitute a material default under the Lease. In the event of such default, Port shall have all rights available under the Lease and at law or equity including, without limitation, the right to either:

(a) Terminate this Lease and collect damages Port incurs as a result of such default, including, without limitation, Remediation costs incurred by Port resulting from the Remediation of any Hazardous Materials present in, on or under the Premises, the Facility, any other Port property; or

(b) Continue this Lease and require Tenant to Remediate such Hazardous Materials at the Tenant's sole cost and expense.

15.9. Survival. Tenant's obligations under Section 15 shall survive the expiration or earlier termination of the Lease.

15.10. Storm Water Pollution Prevention.

(a) Tenant must comply with the applicable provisions of the Statewide General Permit for Discharge of Industrial Storm Water issued by the State Water Resources Control Board, including filing a Notice of Intent to be covered, developing and implementing a site-specific Storm Water Pollution Prevention Plan ("SWPPP"), and conducting storm water monitoring and reporting. Tenant's SWPPP and a copy of a Notice of Intent for Tenant's Premises must be submitted to Port's Real Estate Division before beginning on-site.

(b) In addition to requiring compliance with the permit requirements under Subsection (a), Tenant shall comply with the post-construction stormwater control provisions of

the Statewide General Permit for Discharge of Stormwater from Small Municipalities and the San Francisco Stormwater Design Guidelines, subject to review and permitting by the Port's Engineering Division.

15.11. *Presence of Hazardous Materials.* California Law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that Hazardous Materials (as herein defined) may be present on or near the Premises, including, but not limited to vehicle fluids, janitorial products, tobacco smoke, and building materials containing chemicals, such as lead and formaldehyde. Further, the Hazardous Materials described in the reports listed in the attached Schedules are present on the property. Copies of the reports have been delivered to or made available to Tenant. By execution of this Lease, Tenant acknowledges that the notice set forth in this section satisfies the requirements of California Health and Safety Code Section 25359.7 and related Laws. Tenant must disclose the information contained in this Section 15.11 to any subtenant, licensee, transferee, or assignee of Tenant's interest in this Lease. Tenant also acknowledges its own obligations pursuant to California Health and Safety Code Section 25359.7 as well as the penalties that apply for failure to meet such obligations.

For purposes of this Section 15, the term "**Commencement Date**" shall mean the commencement date (including any early entry period, if any) of the Prior Lease.

16. INSURANCE

16.1. *Required Insurance Coverage.* Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term, the following insurance:

(a) **General Liability Insurance.** Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Tenant is conducting any activity on or Alteration or Improvement to the Premises with risk of explosion, collapse, or underground hazards. This policy must also cover non-owned and for-hire vehicles and all mobile equipment or unlicensed vehicles, such as forklifts.

(b) **Automobile Liability Insurance.** Comprehensive or business automobile liability insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned and hired vehicles and for employer's non-ownership liability, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Tenant's activity on the Premises or the Permitted Use. If parking is a Permitted Use under this Lease, Tenant must obtain, maintain, and provide to Port upon request evidence of personal automobile liability insurance for persons parking vehicles at the Premises on a regular basis, including without limitation Tenant's Agents and Invitees.

(c) **Workers' Compensation; Employer's Liability; Jones Act; U.S. Longshore and Harborworker's Act Insurance.** Worker's Compensation Insurance, U.S. Longshore and Harborworker's Act Insurance and Jones Act Insurance with Employer's Liability limit not less than One Million Dollars (\$1,000,000.00) for each accident, injury or illness, on employees eligible for each. In the event Tenant is self-insured for the insurance required pursuant to this Section 16.1(c), it shall furnish to Port a current Certificate of Permission to Self-Insure signed by the Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California. Notwithstanding the foregoing, so long as Tenant complies with Sections 8.2(h) and 8.2(i) above, Tenant shall not be required to maintain insurance for claims under the Jones Act or U.S. Longshore and Harborworker's Act, respectively.

(d) Personal Property Insurance. Tenant, at its sole cost and expense, shall procure and maintain on all of its personal property and Alterations, in, on, or about the Premises, property insurance on an all risk form, excluding earthquake and flood, to the extent of full replacement value. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's personal property.

(e) Construction Activities. At all times during any period of Tenant's construction of Improvements or Alterations subject to Section 13.

(i) Tenant shall require Tenant's contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars (\$500,000) per incident, One Million Dollars (\$1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars (\$1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) per accident, Five Hundred Thousand Dollars (\$500,000) aggregate disease coverage and One Hundred Thousand Dollars (\$100,000) disease coverage per employee. Tenant shall cause Tenant's Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by Port taking into account the nature and scope of the work and industry custom and practice.

(ii) In addition, Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by Port, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the permanent Improvements, against "all risk" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars (\$1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(f) Watercraft Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain protection and indemnity insurance or other form of watercraft liability insurance acceptable to Port, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft; but this insurance shall be required only if the Tenant operates any watercraft under the provisions of this Lease; provided, however, that, in the event Tenant receives any goods from any watercraft, then Tenant shall require that the operator of such watercraft maintain the insurance set forth in this Section 16.1(f).

(g) Contractor's Pollution Legal Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain Contractor's Pollution Legal Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(h) Business Interruption Insurance. Tenant shall maintain business interruption insurance on an actual loss sustained basis or to cover loss of income and rental

payments for 24 months for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to Sections 16.1(d), 16.1(e) and 16.1(f) above.

(i) Vessel Pollution Liability Insurance. Tenant, at its sole cost and expense, shall procure and maintain Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(j) Hull and Machinery Protection and Indemnity Insurance. Tenant, at its sole cost and expense shall procure and maintain Hull and Machinery Protection and Indemnity Insurance in a form and with limited acceptable to Port.

(k) Special Events/Participants. Tenant, at its sole cost and expense, shall procure and maintain Special Events/Participants Liability (GL) coverage insurance acceptable to Port, with limits not less than One Million Dollars (\$1,000,000.00).

(l) Garage Liability and Garage Keepers Legal Liability Insurance. Garage Liability and Garage Keepers Legal Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence.

(m) Other Coverage. Such other insurance or different coverage amounts as is required by Law or as is generally required by commercial owners of buildings similar in size, character, age and location as the Facility, as may change from time to time, or as may be required by the City's Risk Manager.

16.2. Claims-Made Policies. If any of the insurance required in Section 16.1 above is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three (3) years beyond the termination of this Lease, to the effect that should occurrences during the Term give rise to claims made after termination of this Lease, such claims shall be covered by such claims-made policies.

16.3. Annual Aggregate Limits. If any of the insurance required in Section 16.1 above is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified herein.

16.4. Payment of Premiums. Tenant shall pay the premiums for maintaining all required insurance.

16.5. Waiver of Subrogation Rights. Notwithstanding anything to the contrary contained herein, Port and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Facility or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Facility or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

16.6. General Insurance Matters.

(a) All liability insurance policies required to be maintained by Tenant hereunder shall contain a cross-liability clause, shall name as additional insureds by written endorsement the "CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS," shall be primary to any other insurance available to the additional insureds with respect to claims arising under this Lease, and shall provide that such

insurance applies separately to each insured against whom complaint is made or suit is brought except with respect to the limits of the company's liability.

(b) All insurance policies required to be maintained by Tenant hereunder shall be issued by an insurance company or companies reasonably acceptable to Port with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Tenant's compliance with this Section shall in no way relieve or decrease Tenant's liability under this Lease.

(c) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide for thirty (30) days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Tenant and Port.

(d) Tenant shall deliver to Port certificates of insurance, additional insured policy endorsements and waiver of subrogation endorsements in a form satisfactory to and at the direction of Port, such as hard copy documentation or use of an internet-based insurance compliance tracking systems such as EXIGIS, evidencing the coverages required herein, together with evidence of payment of premiums, on or before the Commencement Date, and upon renewal of each policy not less than thirty (30) days before expiration of the term of the policy. If Port is using an internet-based insurance compliance tracking system, Tenant's broker shall complete the insurance questionnaire and submit all required documentation. Tenant shall, upon Port's request, promptly furnish Port with a complete copy of any insurance policy required hereunder.

(e) Not more often than every year and upon not less than sixty (60) days prior written notice, Port may require Tenant to increase the insurance limits set forth in Section 16.1 above if Port finds in its reasonable judgment that it is the general commercial practice in San Francisco to carry insurance in amounts substantially greater than those amounts carried by Tenant with respect to risks comparable to those associated with the use of the Premises.

17. DAMAGE AND DESTRUCTION.

17.1. Damage and Destruction. If the Premises or the Facility is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within the Repair Period. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that so long as such damage or casualty is not attributable to Tenant, its Agents or Invitees, Tenant shall be entitled to a proportionate reduction of Base Rent during the Repair Period based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises less any insurance proceeds Tenant receives, or would have received if Tenant complied with the requirements set forth in Section 16 above, which proceeds are to be applied against the payment of Rent during any Repair Period.

Port shall use its commercially reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the monthly Base Rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If Port elects not to appropriate funds for such repair, Port shall give written notice to Tenant within sixty (60) days after the date Port elects not to appropriate funds of its election to

terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly Base Rent shall be reduced as provided above, and Tenant shall pay such reduced monthly Base Rent up to the date of termination.

If at any time during the last six (6) months of the Term, the Premises or the Facility is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the Permitted Use. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, (i) Port shall have no obligation to repair the Premises or the Facility, (ii) Tenant shall not be entitled to any abatement of Rent, and (iii) Tenant shall not be entitled to terminate this Lease, in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents, or Invitees. In no event shall Port be required to repair any damage to Tenant's Property or any paneling, decorations, railings, floor coverings, or any Improvements or other Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Facility is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

17.2. Waiver. Port and Tenant intend that the provisions of Section 17 govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4, Sections 1941 and 1942 of the Civil Code of California or under any similar Law now or hereafter in effect.

18. EMINENT DOMAIN.

18.1. General. If all or part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this Lease shall terminate as to any portion of the Premises so taken or conveyed on the Date of Taking.

18.2. Partial Takings. If (a) a part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and (b) Tenant is reasonably able to continue the operation of Tenant's business in that portion of the Premises remaining, and (c) Port elects to restore the Premises to an architectural whole, then this Lease shall remain in effect as to the portion of the Premises remaining, and the Base Rent payable from the Date of Taking shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area so taken bears to the total value of the Premises immediately before the Date of Taking. If, after a partial taking, Tenant is not reasonably able to continue the operation of its business in the Premises or Port elects not to restore the Premises to an architectural whole, this Lease may be terminated by either Port or Tenant by giving written notice to the other party no earlier than thirty (30) days prior to the Date of Taking and no later than thirty (30) days after the Date of Taking. Such notice shall specify the date of termination which shall be not less than thirty (30) or more than sixty (60) days after the date of notice.

18.3. Taking of the Facility. If any substantial portion of the Facility is taken under the power of eminent domain or conveyance in lieu thereof, whether any portion of the Premises is taken or not, Port shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the Date of Taking.

18.4. Temporary Takings. Notwithstanding anything to the contrary contained in Section 18, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the

Premises during the Term up to the total Rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

18.5. Award; Waiver; Termination of Lease; Rent and Award. Upon termination of this Lease in its entirety pursuant to Section 18.3, or pursuant to an election under Section 18.2, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (ii) Port shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against Port for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Property. Port and Tenant intend that the provisions of Section 18 shall govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130, and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

19. INDEMNITY AND EXCULPATION.

19.1. General Indemnity. Tenant shall Indemnify Port, City, including, but not limited to, all of their respective boards, commissions, departments, agencies, and other subdivisions, and their respective Agents (collectively, "**Indemnified Parties**") from, and, if requested, shall defend them, without cost to the Indemnified Parties, against any and all Claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any accident, injury to or death of any person, including any Agents and/or Invitees of Tenant, or loss or damage to or destruction of any property occurring in, on or about the Premises, the Facility or any other Port property, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, including the provisions of Section 20, or (c) the use, occupancy, manner of use or occupancy, or condition of the Premises or the activities therein by Tenant, its Agents, or Invitees, or (d) any construction or other work undertaken by Tenant on the Premises whether before or during the Term, or (e) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises, the Facility or any other Port property.

19.2. Hazardous Materials Indemnity.

(a) In addition to its obligations under Section 19.1, Tenant, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole willful misconduct; and (ii) Tenant's Exacerbation of any Hazardous Material Condition.

(b) Tenant's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by Port or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the Premises or the Facility; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Facility; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vi) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If Port pays any costs within the scope of this section, Tenant must reimburse Port for Port's costs, plus interest at the Interest Rate from the date Port incurs each cost until paid, within three (3) business days after Port's payment demand. Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

19.3. Scope of Indemnities. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable regardless of the active or passive negligence of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on the Indemnified Parties. The Indemnification obligations of Tenant set forth in this Lease shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. The Indemnification obligations of Tenant set forth in this Lease includes all Claims, including loss predicated in whole or in part, upon the active or passive negligence of the Indemnified Parties. Except as specifically provided otherwise, the Indemnification obligations of Tenant set forth in this Lease shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of the Indemnified Parties which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or Invitees.

In addition to Tenant's obligation to Indemnify the Indemnified Parties, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any Claim which actually or potentially falls within the Indemnification obligations of Tenant set forth in this Lease, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by the Indemnified Parties and shall continue at all times thereafter.

The Indemnification obligations of Tenant set forth in this Lease shall include without limitation, Indemnification from all Claims. This Indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of Section 19 shall survive the expiration or earlier termination of this Lease.

19.4. Exculpation. Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises, the Facility or any other Port property for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by the Indemnified Parties.

The Indemnified Parties shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases the Indemnified Parties from all Claims for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Facility adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Facility Systems, (v) Facility defects, and (vi) any other acts, omissions or causes. Nothing in this Section 19.4 shall relieve the Indemnified Parties from liability caused solely and directly by the gross negligence or willful misconduct of the Indemnified Parties, but the Indemnified Parties shall not be liable under any circumstances for any consequential, incidental or punitive damages.

19.5. Effect of Waivers. Tenant, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, Port, or any and all of Port's Agents with respect to any and all Claims arising directly or indirectly from the actual or alleged facts or circumstances of the process leading to this Lease prior to the Effective Date.

Tenant understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Lease might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this Lease shall remain effective. Therefore, with respect to the Claims released in this Lease, Tenant waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, TENANT SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT TENANT WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS LEASE WAS MADE, OR THAT TENANT HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials:

Tenant

20. ASSIGNMENT AND SUBLETTING.

20.1. *Transfer to Affiliate.*

(a) Tenant may make an Affiliate Transfer without obtaining Port's consent, but only if Tenant gives Port: (i) prior written notice at least 20 business days before the Transfer Date; and (ii) copies of all documentation evidencing Tenant's relationship with the Affiliate and the Transfer Agreement within 5 days after the actual Transfer Date.

(b) Port will have the right to: (i) request additional documentation and information relating to Tenant's relationship with the Transferee for 3 months after Tenant has delivered all documents required under Subsection (a); and (ii) object to the Affiliate Transfer on the grounds that the Transferee is not an Affiliate as defined in this Lease, if written notice is delivered to Tenant within 3 months after Port's receipt of all required and requested information.

20.2. *Transfer to Non-Affiliate.*

(a) Except for an Affiliate Transfer, Tenant must obtain Port's prior written consent to any Transfer, which Port will not withhold unreasonably.

(i) Tenant agrees that any of the following will be a reasonable basis for Port to withhold its consent: (1) at the time Tenant requests Port's consent, an Event of Default, or an event that with notice or the passage of time or both would constitute an Event of Default if not cured, has occurred and remains uncured; (2) the Transfer is an Assignment or a Sublease by a Transferee of Tenant; (3) the Transferee's financial condition is or may become insufficient to support all of the financial and other obligations of this Lease; (4) the Transferee's intended use of the Premises is inconsistent with this Lease or otherwise will affect any Port interest materially and adversely; (5) the nature of the Transferee's use of the Premises would involve an increased risk of the Handling or Release of Hazardous Materials or of fire or other casualty; (6) the business reputation or character of the Transferee or any of its Affiliates is not reasonably acceptable to Port; (7) the Transferee is not likely to conduct a business in the Premises of a quality substantially equal to Tenant's or otherwise reasonably acceptable to Port; or (8) Tenant has not cured an Event of Default or an event that with notice or the passage of time or both would constitute an Event of Default if not cured.

(ii) Tenant also agrees that Port will have the right to impose reasonable conditions to a requested consent to a Transfer, which may include: (1) requiring the Transferee to assume all of Tenant's obligations under this Lease; and (2) giving Port the right to

terminate without notice all of Tenant's then-existing Subleases if this Lease is terminated before the existing Subleases expire.

(b) At least 60 days before any Transfer to a Non-Affiliate, Tenant must give Port a Transfer Notice and the following: (i) financial statements for the 3 years before the Transfer Date (or each year of the proposed Transferee's existence, if shorter) for the Transferee and for any other Person who will be liable for Tenant's obligations under this Lease; (ii) Tenant's current financial statements; (iii) a copy of the proposed Transfer Agreement; and (iii) the Transferee's completed pre-screening and leasing application. In addition, Tenant must provide: (1) any other information, documentation, or evidence that Port requests to enable Port to evaluate the Transfer and the Transferee; and (2) if any of the Transfer Terms are modified before the Transfer Date, a new Transfer Notice and all relevant documentation for any modified Transfer Terms. Tenant's Transfer Notice will not be complete until Tenant has provided Port with all information required under this Subsection.

(i) For up to 30 days after receipt of the complete Transfer Notice, Port will have the right to: (1) terminate this Lease as of the proposed Transfer Date; (2) sublease or take an assignment from Tenant of the interest that Tenant proposes to Transfer, on the same terms and conditions as stated in the Transfer Agreement; and (3) negotiate and contract directly with the Transferee on terms acceptable to Port in its sole and absolute discretion.

(c) If Port consents to the Transfer, Tenant must close the Transfer on the Transfer Terms stated in the Transfer Notice within 90 days after Port notifies Tenant of Port's consent. If the Transfer Agreement does not close within the 90-day period, then Port's consent will expire, unless Tenant gives Port a new Transfer Notice, in which case Port again will be entitled to exercise any of the options under this Section.

(d) Any Transfer that does not comply with this Section fully will constitute an incurable Event of Default and will be void as to Port and this Lease. Port's consent to one Transfer will have no effect with respect to any other Transfer.

(e) Tenant agrees to reimburse Port for all costs, including attorneys' fees, that Port incurs to review, investigate, process, document, disapprove, or approve any Transfer request.

20.3. Sublease. In addition to all requirements in Section 20.2, the following provisions apply to any Transfer in the form of a Sublease.

(a) Until the occurrence of an Event of Default, Tenant will have the right to receive and collect rents from the Sublease. The Sublease must require the Transferee to pay the rent and other sums due under the Sublease directly to Port upon receiving Port's written notice that Tenant is in default under this Lease, a copy of which Port will deliver to Tenant. Tenant agrees that it will hold in trust for Port's benefit any Sublease rent or other sums that Tenant collects from the Transferee after Port's notice to the Transferee, and Tenant will be obligated to forward the same to Port immediately upon receipt. Port's collection of rents and other sums under this Section will not constitute Port's acceptance of attornment by the Transferee.

(b) Tenant agrees to pay to Port immediately upon receipt all Excess Rent, less Subletting Expenses, as Additional Rent. In calculating Excess Rent, Subletting Expenses will be amortized on a straight-line basis over the term of the Sublease, without interest. For example, if: (i) the term of the Sublease is 5 years; (ii) Sublease rent is \$5,000 per month; (iii) Tenant's concurrent Rent payable for the Sublease premises is \$3,000 per month; (iv) Tenant's Subletting Expenses are \$15,000 in brokerage commissions and \$15,000 for new tenant improvements for the Sublease premises, then the amount of Excess Rent Tenant must pay to Port in connection with the Sublease is \$1,500 per month, as shown in the calculation below.

Term of Sublease:	5 years x 12 months = 60 months
Subletting Expenses:	\$15,000 + \$15,000 = \$30,000
Amortized Subletting Expenses:	\$30,000/60 months = \$500/month
Excess Rent:	\$5,000/month - \$3,000/month = \$2,000/month
Additional Rent:	\$2,000/month - \$500/month = \$1,500/month

20.4. Transfer Agreement Requirements. Any Transfer Agreement must include the provisions set forth below.

- (a) The Transferee's express assumption of, and acknowledgement and agreement that the Transferee will be jointly and severally liable for, all of Tenant's obligations under this Lease;
- (b) The Indemnification clause and waiver of claims provisions in Section 19;
- (c) Insurance provisions requiring that all of the Transferee's liability and other insurance policies name "*The City and County of San Francisco, the San Francisco Port Commission, and their officers, agents, employees, and representatives*" as additional insureds and acknowledging Port's right to demand increased coverage to amounts customarily required by other San Francisco landlords for premises where business activities similar to the Transferee's are conducted;
- (d) A provision stating that if this Lease is terminated for any reason, the Transferee's right to possession under the Transfer Agreement will terminate; and
- (e) A provision under which the Transferee expressly waives any and all relocation assistance and benefits in connection with this Lease to the extent permitted by applicable Laws.

20.5. Transfer Audit. Tenant agrees to make its Books and Records available to, and cooperate with, any Port representative for the purpose of conducting an audit of the accuracy of Tenant's financial reporting on the Transfer for a period of no less than one year after the Expiration Date. If an audit reveals that Tenant has overstated Subletting Expenses or any other costs in connection with a Transfer, Tenant must pay Port promptly upon demand the difference between the amount Tenant deducted and the amount it should have deducted, plus interest at the Interest Rate from the Transfer Date until paid. As used in this section, Tenant includes Affiliates where applicable.

20.6. Acknowledgement. Tenant acknowledges and agrees that Port's rights with respect to Transfers are reasonable limitations for purposes of California Civil Code Section 1951.4 and waives any Claims arising from Port's actions under this Section 20.

20.7. Transfer Definitions. For the purpose of this Section, references to this Lease and the Premises mean this Lease and the Premises to the extent Tenant's leasehold interest is affected by a Transfer. Other applicable definitions are in Section 2.

21. DEFAULT BY TENANT.

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

- (a) failure to pay to Port any Rent or other sum payable hereunder when due, and such default continues for a period of three (3) days following written notice from Port. Notwithstanding the foregoing, Port shall not be required to provide such notice more than twice during any 12-month period, and any such failure by Tenant after Tenant has received two (2)

such notices in such 12-month period shall constitute an Event of Default by Tenant hereunder without any further action by Port or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(b) abandonment or vacation of the Premises by Tenant; or

(c) failure to use the Premises solely for the Permitted Use, as determined by Port in its sole and absolute discretion and such failure continues for a period of twenty-four (24) hours following written notice from Port; provided, however, that notwithstanding the foregoing, failure to use the Premises solely for the Permitted Use shall, at Port's sole and absolute discretion, be deemed an incurable breach of this Lease, allowing Port to immediately terminate this Lease without notice or demand to Tenant; or

(d) failure by Tenant to execute and deliver to Port the estoppel certificate within the time period and in the manner required by Section 32 below, and Tenant's failure to cure the foregoing default within five (5) days following written notice from Port; or

(e) a Transfer, or attempted Transfer, of this Lease or the Premises by Tenant contrary to the provision of Section 20 above; or

(f) failure by Tenant or Tenant's broker as applicable to provide evidence of insurance coverage complying with the provisions of Section 16 above, failure to maintain any insurance required to be maintained by Tenant pursuant to this Lease, or if any such insurance shall be canceled or terminated or shall expire or be reduced or materially changed, except as permitted in this Lease and Tenant's or Tenant's broker as applicable failure to deliver evidence of such coverage or failure to reinstate such coverage, all within three (3) business days following written notice from Port; or

(g) failure by Tenant to comply with the provisions of Section 15 above and Tenant's failure to cure the foregoing default within twenty-four (24) hours following written notice from Port. If such default cannot reasonably be cured within such twenty-four (24) hour period, Tenant shall not be in default of this Lease if Tenant commences to cure the default within such twenty-four (24) hour period and diligently and in good faith continues to cure the default, provided, however, in no event shall Tenant have more than thirty (30) days to cure such default; or

(h) without limiting the provisions of Sections 21(c) or 21(g) above, failure by Tenant to comply with Laws and Tenant's failure to cure the foregoing default within forty-eight (48) hours following written notice from Port; or

(i) failure by Tenant to discharge any lien or encumbrance placed on the Facility or any part thereof in violation of this Lease within ten (10) days after the date such lien or encumbrance is filed or recorded against the Facility or any part thereof, or if Tenant has no knowledge of such lien, then Tenant shall discharge such lien or encumbrance within fifteen (15) days following Tenant's knowledge of such lien or encumbrance; or

(j) delivery to Tenant of three (3) or more notices of default, irrespective of whether Tenant actually cures such default within the specified time period, may, at the sole and absolute discretion of Port, be deemed an incurable breach of this Lease allowing Port to immediately terminate this Lease without further notice or demand to Tenant; or

(k) failure by Tenant to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and such failure continues for a period of fifteen (15) days after written notice by Port, provided that if such default is not capable of cure within such fifteen (15) day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15) day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from Port. Port shall not be required to provide such notice more than twice in any

twelve (12) month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12) month period shall automatically constitute an Event of Default hereunder; or

(l) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the U.S. Bankruptcy Code or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or

(m) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or

(n) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days; or

(o) Tenant has been notified by Port that Tenant is considered a Habitual Late

Payer.

22. PORT'S REMEDIES.

Upon default by Tenant, Port shall, without further notice or demand of any kind to Tenant or to any other person, have the following remedies:

22.1. *Tenant's Right to Possession Not Terminated.* Port has the remedy described in Section 1951.4 of the California Civil Code (a landlord may continue the lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations) under which it may continue this Lease in full force and effect and Port may enforce all of its rights and remedies under this Lease, including the right to collect Rent when due. During the period Tenant is in default, Port may enter the Premises without terminating this Lease and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Port for all reasonable costs Port incurs in reletting the Premises, including, but not limited to, broker's commissions, expenses of remodeling the Premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining Term, at such rents and on such other terms and conditions as City deems advisable. Tenant shall pay to Port the Rent due under this Lease on the dates the Rent is due, less the Rent Port receives from any reletting. In the event that Port shall elect to so relet, then rentals received by Port from such reletting shall be applied in the following order: (i) to reasonable attorneys' fees incurred by Port as a result of a default and costs in the event suit is filed by Port to enforce such remedies; (ii) to the payment of any indebtedness other than Rent due hereunder from Tenant to Port; (iii) to the payment of any costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (iv) to the payment of Rent due and unpaid hereunder; (v) to the payment of future Rent and other sums payable by Tenant hereunder as the same may become due and payable hereunder; and (vi) the balance, if any, shall be paid to Tenant upon (but not before) expiration of the Term. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of Rent hereunder, be less than the Rent payable during the month by Tenant hereunder, then Tenant shall pay such deficiency to Port. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Port, as soon as ascertained, any costs and expenses incurred by Port in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting. No act by Port allowed by this Section 22.1 shall terminate this Lease unless Port notifies Tenant that Port elects to terminate this Lease. After Tenant's default and for as long as Port does not terminate Tenant's right to possession of the Premises, if Tenant obtains Port's

consent Tenant shall have the right to assign or sublet its interest in this Lease, but Tenant shall not be released from liability.

22.2. Termination of Tenant's Right to Possession. Port may terminate Tenant's right to possession of the Premises at any time. No act by Port other than giving notice of termination to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Port's initiative to protect Port's interest under this Lease shall not constitute a termination of Tenant's right to possession. If Port elects to terminate this Lease, Port has the rights and remedies provided by California Civil Code Section 1951.2, including the right to recover from Tenant the following.

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate Port for the detriment proximately caused by Tenant's default, or which, in the ordinary course of events, would likely result, including, but not limited to, attorneys' fees and court costs, the costs of carrying the Premises such as repairs, maintenance, taxes and insurance premiums, utilities, security precautions and the reasonable costs and expenses incurred by Port in (i) retaking possession of the Premises; (ii) cleaning and making repairs and alterations necessary to return the Premises to good condition and preparing the Premises for reletting; (iii) removing, transporting and storing any of Tenant's Property left at the Premises (although Port shall have no obligation so to do); and (iv) reletting the Premises, including, without limitation, brokerage commissions, advertising costs and attorneys' fees. Efforts by Port to mitigate the damages caused by Tenant's breach of the Lease do not waive Port's rights to recover damages upon termination.

The "worth at the time of award" of the amounts referred to in Sections 22.2(a) and 22.2(b) above shall be computed by allowing interest at an annual rate equal to the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge. The "worth at the time of award" of the amount referred to in Section 22.2(c) above shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

22.3. Appointment of Receiver. If Tenant is in default of this Lease, Port shall have the right to have a receiver appointed to collect Rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Port to terminate this Lease.

22.4. Port's Right to Cure Tenant's Default. Port, at any time after Tenant commits a default, may, at Port's sole option, cure the default at Tenant's cost. If Port at any time, by reason of Tenant's default, undertakes any act to cure or attempt to cure such default that requires the payment of any sums, or otherwise incurs any costs, damages, or liabilities, (including without limitation, attorneys' fees), all such sums, costs, damages or liabilities paid by Port shall be due immediately from Tenant to Port at the time the sum is paid, and if paid by Tenant at a later date shall bear interest at the lesser of the Interest Rate or the maximum non-usurious rate Port is permitted by Law to charge from the date such sum is paid by Port until Port is reimbursed by Tenant.

22.5. Port's Options for Hazardous Materials Default. If Tenant's Event of Default arises from Tenant's failure to comply with its Remediation obligations under Section 15 above,

in addition to its other remedies at law, in equity, and under this Lease, Port may elect at its sole discretion any of the following remedies.

(a) Port may terminate this Lease and collect damages Port incurs as a result of the Event of Default, including Port's costs to Remediate any Hazardous Materials.

(b) Port may keep this Lease in effect and require Tenant to Remediate the Hazardous Materials at the Tenant's sole cost.

(c) Port may deem Tenant to have held over, and Tenant will be required to pay Rent as increased under Section 26.2 until the Premises are Remediated. If Port elects this remedy, only Port's notice to Tenant confirming termination of this Lease and accepting Tenant's surrender of the Premises will terminate this Lease or any holdover tenancy. No other Port acts or conduct, such as accepting the keys to the Premises, will constitute an acceptance of Tenant's surrender of the Premises.

22.6. *No Accord and Satisfaction.* No payment by Tenant or receipt by Port of an amount less than the Rent due under this Lease shall be deemed to be other than "on account" of the earliest Rent due; nor shall any endorsement or statement on any check or payment, or letter accompanying such check or payment, be deemed an accord and satisfaction. Port may accept any such partial payment or tender without prejudice to its right to recover the balance of any amount due and to pursue any other remedy herein provided at Law or in equity.

22.7. *Waiver of Redemption.* Tenant hereby waives, for itself and all persons claiming by and under Tenant, redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other pertinent present or future Law, in the event Tenant is evicted or Port takes possession of the Premises by reason of any default of Tenant hereunder.

22.8. *Habitual Late Payer.* In the event Tenant is deemed to be a Habitual Late Payer, in addition to any other remedies available to Port, Port may require that Tenant enter into direct electronic payment arrangements and/or Port may require payments of Rent be made in advance on a quarterly basis.

22.9. *Remedies Not Exclusive.* The remedies set forth in Section 22 are not exclusive; they are cumulative and in addition to any and all other rights or remedies of Port now or later allowed by Law. Tenant's obligations hereunder shall survive any termination of this Lease.

23. LITIGATION EXPENSES; ATTORNEYS' FEES.

23.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross-complaint, counterclaim, or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this Lease, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

23.2. *Appeals.* Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

23.3. *City Attorney.* For purposes of this Lease, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

24. PORT'S ENTRY ON PREMISES.

24.1. Entry for Inspection. Port and its authorized Agents shall have the right to enter the Premises without notice at any time during normal business hours of generally recognized business days, provided that Tenant or Tenant's Agents are present on the Premises (except in the event of an emergency), for the purpose of inspecting the Premises to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.

24.2. General Entry. In addition to its rights pursuant to Section 24.1 above, Port and its authorized Agents shall have the right to enter the Premises at all reasonable times and upon reasonable notice for any of the following purposes:

(a) To perform any necessary maintenance, repairs or restoration to the Premises, or to perform any services which Port has the right or obligation to perform;

(b) To serve, post, or keep posted any notices required or allowed under the provisions of this Lease;

(c) To post "For Sale" signs at any time during the Term; to post "For Lease" signs during the last six (6) months of the Term or during any period in which Tenant is in default;

(d) On an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties;

(e) If any excavation or other construction is undertaken or is about to be undertaken on any property or street adjacent to the Premises, to shore the foundations, footings or walls of the Premises and to erect scaffolding and protective barricades around and about the Premises as reasonably necessary in connection with such activities (but not so as to prevent or unreasonably restrict entry to the Premises), and to do any other act or thing necessary for the safety or preservation of the Premises during such excavation or other construction; or

(f) To obtain environmental samples and perform equipment and facility testing.

24.3. Emergency Entry. Port may enter the Premises at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the Premises. Entry to the Premises by any of these means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion of them.

24.4. No Liability. Port shall not be liable in any manner, and Tenant hereby waives any Claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in Rent, arising out of Port's entry onto the Premises as provided in Section 24 or performance of any necessary or required work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, except damage resulting solely from the willful misconduct of Port or its authorized representatives.

24.5. Nondisturbance. Port shall use its commercially reasonable efforts to conduct its activities on the Premises as allowed in Section 24 in a manner which, to the extent reasonably practicable, will minimize annoyance or disturbance to Tenant.

25. SURRENDER AND QUITCLAIM.

25.1. Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender to Port the Premises in good order, condition, and repair (except for ordinary wear and

tear occurring after the last necessary maintenance made by Tenant and except for destruction or condemnation as described in Sections 17 and 18 hereof). Ordinary wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant, or Tenant otherwise performing all of its obligations under this Lease. The Premises shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by Port. On or before the expiration or earlier termination of this Lease, Tenant at its sole cost shall remove from the Premises, and repair any damage caused by removal of, Tenant's Property, including any signage and Alterations and Improvements specified in Port's Notice of Removal. Except for those designated in Port's Notice of Removal, Alterations and Improvements shall remain in the Premises as Port property.

If the Premises are not surrendered at the end of the Term or sooner termination of this Lease, and in accordance with the provisions of this Section 25 and Section 13.4, Tenant shall continue to be responsible for the payment of Rent (as the same may be increased pursuant to Section 26.3 below until the Premises are surrendered in accordance with these Sections, and Tenant shall Indemnify Port from and against any and all loss or liability resulting from delay by Tenant in so surrendering the Premises including, without limitation, any costs of Port to obtain possession of the Premises; any loss or liability resulting from any Claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each instance, reasonable attorneys' fees and costs.

No act or conduct of Port, including, but not limited to, the acceptance of the keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Port to Tenant confirming termination of this Lease and surrender of the Premises by Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this Lease.

25.2. *Quitclaim.* Upon the expiration or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Tenant or Port, become the property of Port, free and clear of all liens and without payment therefore by Port and shall be surrendered to Port upon such date. Upon or at any time after the expiration or earlier termination of this Lease, if requested by Port, Tenant shall promptly deliver to Port, without charge, a quitclaim deed to the Premises and any other instrument reasonably requested by Port to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any that Port agrees are to remain part of the Premises.

25.3. *Abandoned Property.* Any items, including Tenant's Property, not removed by Tenant as required herein shall be deemed abandoned. Port may retain, store, remove, and sell or otherwise dispose of abandoned Tenant's Property, and Tenant waives all Claims against Port for any damages resulting from Port's retention, removal and disposition of such property; provided, however, that Tenant shall be liable to Port for all costs incurred in storing, removing and disposing of abandoned Tenant's Property and repairing any damage to the Premises or the Facility resulting from such removal. Tenant agrees that Port may elect to sell abandoned Tenant's Property and offset against the sales proceeds Port's storage, removal, and disposition costs without notice to Tenant or otherwise according to the procedures set forth in California Civil Code Section 1993, the benefits of which Tenant waives.

25.4. *Survival.* Tenant's obligation under this Section 25 shall survive the expiration or earlier termination of this Lease.

26. HOLDING OVER.

26.1. *Terms of Holdover Tenancy.* Any holding over after the expiration of the Term shall not constitute a renewal of this Lease, but be deemed a month-to-month tenancy upon the

terms, conditions, and covenants of this Lease, except as provided in this Section. Either party may cancel the month-to-month tenancy upon thirty (30) days written notice to the other party. Tenant shall Indemnify Port from and against any and all loss or liability resulting from Tenant's delay in surrendering the Premises including, without limitation, any loss or liability resulting from any claim against Port made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses to Port due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, actual attorneys' fees and costs.

26.2. *With Consent.* If Tenant holds over with the prior written consent of Port, monthly Base Rent shall be equal to one hundred fifty percent (150%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease; provided that if both Tenant and Port desire to enter into a new lease or extend the existing term of this Lease but have not yet executed such new lease or extension solely due to Port's delay to produce such document, then the monthly Base Rent during such holdover period shall be equal to the higher of the: (a) Base Rent payable in the month immediately preceding the expiration of this Lease, or (b) the then current rate for the Facility approved by the Port Commission, together with any monthly charge of Additional Rent payable under this Lease.

26.3. *Without Consent.* If Tenant holds over without the prior written consent of Port, monthly Base Rent shall equal two hundred percent (200%) of the monthly Base Rent payable in the month immediately preceding the expiration of this Lease.

27. MINERAL RESERVATION.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of these Statutes, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract subsurface minerals, including oil and gas deposits, from such area.

In no event shall Port be liable to Tenant for any Claims arising from such exploration or drilling, nor shall such exploration or drilling constitute an actual or constructive eviction of Tenant, or entitle Tenant to any abatement or diminution of Rent or otherwise relieve Tenant from any of its obligations under this Lease.

28. CITY AND PORT REQUIREMENTS.

The San Francisco Municipal Codes (available at www.sfgov.org) and City and Port policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

28.1. *Nondiscrimination.*

(a) **Covenant Not to Discriminate.** In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this Chapter 12B or 12C of the San Francisco Administrative Code or in retaliation for opposition to any practices forbidden under Chapter 12B or 12C of the Administrative Code against any employee of Tenant, any City and County employee working with Tenant, any

applicant for employment with Tenant, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant in the City and County of San Francisco.

(b) **Subleases and Other Contracts.** Tenant shall include in all subleases and other contracts relating to the Premises a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section (a) above. In addition, Tenant shall incorporate by reference in all subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of the Administrative Code and shall require all subtenants and other contractors to comply such provisions.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the Administrative Code.

(d) **HRC Form.** On or prior to the Lease Commencement Date, Tenant shall execute and deliver to Port the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) **Penalties.** Tenant understands that pursuant to Section 12B.2(h) of the Administrative Code, a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

28.2. Requiring Health Benefits for Covered Employees. Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in Administrative Code Chapter 12Q (Chapter 12Q).

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3 of the HCAO, it shall have no obligation to comply with Section 28.2(a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant

shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

28.3. First Source Hiring. The City has adopted a First Source Hiring Program (San Francisco Administrative Code Sections 83.1 et seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions as those terms are defined by the ordinance. Tenant acknowledges receiving and reviewing the First Source Hiring Program materials and requirements.

Tenant agrees to comply with the ordinance through compliance with the following:

(a) No later than thirty (30) days after full execution of this Lease, Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco.

(b) Tenant shall follow all requirements of the San Francisco Workforce Development System, including without limitation, notification of vacancies throughout the Term and entering into a First Source Hiring Agreement, if applicable.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to the ordinance, Tenant may be subject to monetary penalties for failure to comply with the ordinance.

28.4. Local Business Enterprises. The Port Commission encourages the participation of local business enterprises ("LBEs") in Tenant's operations. Tenant agrees to consult with HRC to determine appropriate methods for promoting participation by LBEs in the Scope of Work. Architecture, Engineering, Laboratory Services (Materials Testing), Trucking and Hauling, and Security Guard Services are categories of services that may provide opportunities for certified LBE participation. City maintains a list of certified LBEs at: http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlist_1.htm.

28.5. Resource-Efficient Facilities and Green Building Requirements. Tenant agrees to comply with all applicable provisions of Environment Code Chapters 7 and 13C relating to resource-efficiency and green building design requirements.

28.6. Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

28.7. Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

28.8. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant agrees to remove all graffiti from any real property owned or leased by Tenant in the City within forty-eight (48) hours of the earlier of Tenant's: (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any

building, structure, fixture or other improvement, whether permanent or temporary, including signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and that is visible from the public right-of-way, but does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the Public Works Code, the Planning Code, or the Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (Calif. Civil Code §§ 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

28.9. Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the Environment Code (the "**Pesticide Ordinance**") which (a) prohibit the use of certain pesticides on City property, (b) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (c) require Tenant to submit to Port an integrated pest management (IPM) plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (iii) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 307 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant, at Tenant's sole cost and expense, if Tenant seeks in good faith an exemption under the Pesticide Ordinance.

28.10. MacBride Principles Northern Ireland. Port and the City urge companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. Port and the City urge San Francisco companies to do business with corporations that abide by the MacBride Principles.

28.11. Tropical Hardwood and Virgin Redwood Ban. Port and the City urge Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the Environment Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

28.12. Preservative-Treated Wood Containing Arsenic. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

28.13. Notification of Limitations on Contributions. Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of each person, entity or committee described above.

28.14. Sunshine Ordinance. In accordance with Section 67.24(e) of the Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

28.15. Conflicts of Interest. Through its execution of this Lease, Tenant acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which would constitute a violation of these provisions, and agrees that if Tenant becomes aware of any such fact during the Term, Tenant shall immediately notify the Port.

28.16. Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Port premises.

28.17. Wages and Working Conditions. Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

28.18. Public Transit Information. Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed

on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facility and encouraging use of such facilities, all at Tenant's sole expense.

28.19. Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

28.20. Southern Waterfront Community Benefits and Beautification Policy. The Port's "Policy for Southern Waterfront Community Benefits and Beautification" identifies beautification and related projects in the Southern Waterfront (from Mariposa Street in the north to India Basin) that require funding. Under this policy, Tenant shall provide community benefits and beautification measures in consideration for the use of the Premises. Examples of desired benefits include: (i) beautification, greening and maintenance of any outer edges of and entrances to the Premises; (ii) creation and implementation of a Community Outreach and Good Neighbor Policy to guide Tenant's interaction with Port, neighbors, visitors and users; (iii) use or support of job training and placement organizations serving southeast San Francisco; (iv) commitment to engage in operational practices that are sensitive to the environment and the neighboring community by reducing engine emissions consistent with the City's Clean Air Program, and use of machines at the Premises that are low-emission diesel equipment and utilize biodiesel or other reduced particulate emission fuels; (v) commitment to use low impact design and other "green" strategies when installing or replacing stormwater infrastructure; (vi) employment at the Premises of a large percentage of managers and other staff who live in the local neighborhood or community; (vii) use of trucks that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" under the City's Local Business Enterprise and Non-Discrimination Ordinance (SF Administrative Code Chapter 14B, as amended); and (viii) use of businesses that are located within the Potrero Hill and Bayview Hunters Point neighborhoods. Tenant agrees to provide Port with documents and records regarding these activities upon Port's request.

28.21. Prevailing Wage Rate Requirement For Theatrical Workers.. City law entitles individuals engaged in theatrical or technical services related to presentation of a "Show" on City property to receive the Prevailing Rate of Wages (including fringe benefits or matching equivalents) fixed by the Board of Supervisors, unless the event is free and open to the public or meets any of the other exemptions in San Francisco Administrative Code Section 21C.4(b)(1)(A)-(F). A "Show" means any live act, play, review, pantomime, scene, music, song, dance act, song and dance act, or poetry recitation provided in front of a live audience or recorded for the purpose of later presentation, but shall not include an event where the person solely plays pre-recorded music or pre-recorded performances so long as no other live performance is provided.

Theatrical and technical services include, without limitation, those related to rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.

Accordingly, Tenant, as a condition of this Lease, agrees and acknowledges that:

(1) Tenant will comply with the obligations in San Francisco Administrative Code Section 21C.4, and will require Tenant's subtenants, contractors, and any subcontractors, to comply with the obligations in Section 21C.4, to pay Prevailing Wage Rates to workers engaged in theatrical and technical services related to a Show on the Premises. In addition, if Tenant or its subtenant, contractor (or any subcontractor) fails to comply with these obligations, the City may use all available remedies against Tenant to secure compliance and seek redress for workers who provided the services if they do not receive Prevailing Wage Rates.

(2) The City may inspect and/or audit any workplace or job site on property covered by this Lease or books and papers relating to the events covered by this Lease, and may interview any individual who provides, or has provided, work involving theatrical or technical services in connection with this Lease.

(3) Tenant will give the City (and require any subtenant, contractor or subcontractor who maintains such records to give to the City) immediate access to such workers' time sheets, payroll records, and paychecks for inspection.

For current Prevailing Wage rates, see www.sfgov.org/olse/prevailingwages or call the Office of Labor Standard Enforcement at 415-554-6235.

Tenant understands the prevailing wage requirement described above and agree to comply with it.

Tenant Initials _____

29. NOTICES.

Except as otherwise expressly provided in this Lease or by Law, all notices (including notice of consent or non-consent) required or permitted by this Lease or by Law must be in writing and be delivered by: (a) hand delivery; (b) first class United States mail, postage prepaid; or (c) overnight delivery by a nationally recognized courier or the United States Postal Service, delivery charges prepaid. Notices to a party must be delivered to that party's mailing address in the Basic Lease Information, unless superseded by a notice of a change in that party's mailing address for notices, given to the other party in the manner provided above, or by information provided by Tenant in Tenant's written response to Port's written request for such information.

All notices under this Lease shall be deemed to be duly delivered: (a) on the date personal delivery actually occurs; (b) if mailed, on the business day following the business day deposited in the United States mail or, if mailed return receipt requested, on the date of delivery or on which delivery is refused as shown on the return receipt; or (c) the business day after the business day deposited for overnight delivery.

Notices may not be given by facsimile or electronic mail, but either party may deliver a courtesy copy of a notice by facsimile or electronic mail.

30. MISCELLANEOUS PROVISIONS.

30.1. California Law. This Lease is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California and City's Charter. Port and Tenant hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

30.2. Entire Agreement. This Lease contains all of the representations and the entire agreement between the parties with respect to the subject matter of this Lease. Any prior correspondence, memoranda, agreements, warranties, or representations, whether written or oral, relating to such subject matter are superseded in total by this Lease. No prior drafts of this Lease or changes from those drafts to the executed version of this Lease shall be introduced as evidence

in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this Lease.

30.3. Amendments. No amendment of this Lease or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

30.4. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

30.5. Interpretation of Lease.

(a) References in this Lease to Tenant's acts or omissions will mean acts or omissions by Tenant and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this Lease unless otherwise specifically identified. All exhibits and schedules are incorporated in this Lease by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically provided. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this Lease. Wherever reference is made to any provision, term, or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this Lease in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this Lease.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this Lease and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this Lease are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This Lease has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this Lease must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under California Civil Code § 1654) against the party responsible for drafting any part of this Lease.

(g) The party on which any obligation is imposed in this Lease will be solely responsible for paying all costs and costs incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and

defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this Lease occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

30.6. Successors. The terms, covenants, agreements and conditions set forth in this Lease shall bind and inure to the benefit of Port and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns.

30.7. Real Estate Broker's Fees. Port will not pay, nor will Port be liable or responsible for, any finder's or broker's fee in connection with this Lease. Tenant agrees to indemnify and hold Port harmless from any Claims, including attorneys' fees, incurred by Port in connection with any such Claim or Claims of any person(s), finder(s), or broker(s) to a commission in connection with this Lease.

30.8. Counterparts. For convenience, the signatures of the parties to this Lease may be executed and acknowledged on separate pages which, when attached to this Lease, shall constitute as one complete Lease. This Lease may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same Lease.

30.9. Authority. If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon Port's request, Tenant shall provide Port with evidence reasonably satisfactory to Port confirming the foregoing representations and warranties.

30.10. No Implied Waiver. No failure by Port to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Rent during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Tenant requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Tenant. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this Lease.

30.11. Time is of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

30.12. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

30.13. Survival of Indemnities. Termination or expiration of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, the ability to collect any sums due, nor shall it affect any provision of this Lease that expressly states it shall survive termination or expiration hereof.

30.14. Relationship of the Parties. Port is not, and none of the provisions in this Lease shall be deemed to render Port, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect

hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

30.15. No Recording. Tenant shall not record this Lease or any memorandum hereof in the Official Records.

30.16. Additional Written Agreement Required. Tenant expressly agrees and acknowledges that no officer, director, or employee of Port or City is authorized to offer or promise, nor is Port or the City required to honor, any offered or promised rent credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "Concession") without a written agreement executed by either the Executive Director of Port or the Deputy Director of Real Estate authorizing such Concession and, if applicable, certification of the Concession from the City's Controller.

31. LIMITATION ON DAMAGES.

31.1. No Recourse Beyond Value of Facility. Tenant agrees that Tenant will have no recourse with respect to, and Port shall not be liable for, any obligation of Port under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of Port's fee interest in the Facility (as encumbered by this Lease). Tenant's execution and delivery hereof and as part of the consideration for Port's obligations hereunder Tenant expressly waives all such liability.

31.2. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City and/or Port shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City and/or Port or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City and/or Port under this Lease. Under no circumstances shall Port, City, or their respective Agents be liable under any circumstances for any consequential, incidental or punitive damages.

31.3. Limitation on Port's Liability Upon Transfer. In the event of any transfer of Port's interest in and to the Facility, Port (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of Port, but not from liability incurred by Port (or such transferor, as the case may be) on account of covenants or obligations to be performed by Port (or such transferor, as the case may be) hereunder before the date of such transfer.

32. TENANT ESTOPPEL CERTIFICATES.

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from Port, shall execute and deliver to Port or to any party designated by Port a certificate in substantially the same form as that attached to this Lease as *Exhibit C*. If Tenant shall fail to provide such certificate within ten (10) days of receipt by Tenant of a written request by Port as herein provided, such failure shall, at Port's election, constitute a default under this Lease, and Tenant shall be deemed to have admitted the accuracy of any information supplied by Port to a prospective purchaser or mortgagee.

33. APPROVAL OF BOARD OF SUPERVISORS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION,

AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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IN WITNESS WHEREOF, PORT and TENANT execute this Lease as of the last date set forth below.

PORT: **CITY AND COUNTY OF SAN FRANCISCO,**
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

TENANT: **[INSERT NAME OF TENANT]**

By: _____
Name: _____
Title: _____

Date Signed: _____

By: _____
Name: _____
Title: _____

Date Signed: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney

Lease Prepared By: _____, Commercial Property Manager _____
(initial)

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EXHIBIT A

DESCRIPTION OF PREMISES

[Attachment on following page]

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EXHIBIT B

COMMENCEMENT DATE AND EXPIRATION DATE MEMORANDUM

Landlord: **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation,
operating by and through the **SAN FRANCISCO PORT COMMISSION**

Tenant:

Lease Number:

Lease Date:

Premises: [_____, Suite ____]
San Francisco, California

The Commencement Date of the Lease is hereby established as _____, 20____, the
Rent Commencement Date of the Lease is hereby established as _____, 20____ and the
Expiration Date as _____, 20____.

PORT: **CITY AND COUNTY OF SAN FRANCISCO**,
a municipal corporation, operating by and through the
SAN FRANCISCO PORT COMMISSION

By: _____
Susan Reynolds
Deputy Director, Real Estate

Date Signed: _____

Tenant:

By: _____
Name: _____
Title: _____

Date Signed: _____

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EXHIBIT C

TENANT ESTOPPEL CERTIFICATE

The undersigned, _____, is the tenant of a portion of the real property commonly known as [Insert Premises Address] located in San Francisco, California (the "Property"), and hereby certifies to **THE CITY AND COUNTY OF SAN FRANCISCO THROUGH THE SAN FRANCISCO PORT COMMISSION ("Port")** [and to _____ ("Developer/Lender")] the following:

1. That there is presently in full force and effect a lease (as modified, assigned, supplemented and/or amended as set forth in paragraph 2 below, the "Lease") dated as of _____, 20__, between the undersigned and Port, covering approximately _____ square feet of the Property (the "Premises").

2. That the Lease has not been modified, assigned, supplemented or amended except by:

3. That the Lease represents the entire agreement between Port and the undersigned with respect to the Premises.

4. That the commencement date under the Lease was _____, 20__, the expiration date of the Lease is _____, 20__.

5. That the present minimum monthly Base Rent which the undersigned is paying under the Lease is \$ _____.

6. The security deposit held by Port under the terms of the Lease is \$ _____ and Port holds no other deposit from Tenant for security or otherwise.

7. That the undersigned has accepted possession of the Premises and that, to the best of the undersigned's knowledge, any improvements required to be made by Port to the Premises by the terms of the Lease and all other conditions of the Lease to be satisfied by Port have been completed or satisfied to the satisfaction of the undersigned.

8. That, to the best of the undersigned's knowledge, the undersigned, as of the date set forth below, has no right or claim of deduction, charge, lien or offset against Port under the Lease or otherwise against the rents or other charges due or to become due pursuant to the terms of the Lease.

9. That, to the best of the undersigned's knowledge, Port is not in default or breach of the Lease, nor has Port committed an act or failed to act in such a manner, which, with the passage of time or notice or both, would result in a default or breach of the Lease by Port.

10. That, to the best of the undersigned's knowledge, the undersigned is not in default or in breach of the Lease, nor has the undersigned committed an act or failed to act in such a manner which, with the passage of time or notice or both, would result in a default or breach of the Lease by the undersigned.

11. The undersigned is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.

This Certificate shall be binding upon and inure to the benefit of the undersigned, Port, [Developer/Lender] and [its/their respective] successors and assigns.

Dated: _____, 20__.

[Name of Tenant]

By:

Name:

Title:

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EXHIBIT D
RULES AND REGULATIONS

[To Be Attached for Applicable Facilities]

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EXHIBIT E

PORT OF SAN FRANCISCO HISTORIC PRESERVATION REVIEW GUIDELINES FOR PIER AND BULKHEAD WHARF SUBSTRUCTURES

Approved by San Francisco Port Commission, October 26, 2004, with proposed amendments to respond to comments from California State Office of Historic Preservation.

Background

As part of the preparation of the Port of San Francisco Embarcadero Waterfront National Register Historic District nomination, the Port has developed Historic Preservation Review Guidelines (Guidelines) to define how the Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards) should be interpreted and applied to the historic resources within the District, to ensure its responsible management and stewardship. The set of Guidelines below focuses on Pier and Bulkhead Wharf Substructures, providing an important tool to be used by the Port's historic preservation experts to define parameters for the repair, maintenance or alterations to the pile foundations, substructures and decks of piers and bulkhead wharves upon which pier sheds, bulkhead buildings and other waterfront structures sit.

These Guidelines were developed by the Port's historic preservation expert staff in concert with San Francisco Architectural Heritage and preservation experts familiar with the specific historic resources in the District. The Guidelines were approved by the San Francisco Port Commission in October 2004, and further amended to respond to comments from the California State Office of Historic Preservation. The Guidelines will be used in the review of pier and bulkhead wharf substructure projects that are subject only to approval by the Port. Projects affecting District resources which are subject to review and approval by any of the following entities are not subject to these Guidelines, in recognition of the separate review criteria and practices employed by those agencies to administer the Secretary's Standards:

- 1) Federal Undertakings - Requiring Section 106 consultation
 - Projects receiving federal funding
 - Transfer of federal property
 - Approval of a federal permit, license or similar entitlement (i.e. Army Corps. of Engineers)
- 2) Federal Historic Preservation Tax Credit Projects – Requiring State Office of Historic Preservation and National Park Service approvals
- 3) San Francisco Landmarks Preservation Advisory Board – Subject to Planning Code Article 10 Provisions for City Landmarks and City Historic Districts

Port of San Francisco Review Process – Overview

For projects affecting historic resources within the Embarcadero Historic District that are subject only to the Port's review and approval, the Port conducts its review in conjunction with use of Historic Preservation Guidelines, where applicable, to direct actions that comply with the Secretary's Standards.

All projects undergo case-specific review to determine the appropriate application of the Guidelines and other related Port design reviews. The Port maintains qualified historic preservation expertise on staff and may work with other qualified historic preservation professionals to review projects for consistency with the Secretary's Standards and any applicable Guidelines.

In the case of repairing and managing pier and bulkhead wharf substructures, the Guidelines below are to be used in the Port review process. The process follows the principles of the Secretary's Standards for Rehabilitation and the Port's longstanding practice of repairing existing materials wherever feasible. Replacement of historic materials, if deterioration makes such repair infeasible, is limited to replacement in-kind (use of the same materials) whenever possible. Where replacement in-kind is infeasible, the Port directs use of new substitute materials that are compatible with the character defining features of the subject historic resource to preserve the historic integrity of Contributing resources or, in the case of reviewing Non-Contributing resources, the integrity of the Historic District.

I. Pier and Bulkhead Wharf Substructures

The historic piers and resources in the Embarcadero Historic District are made up of pile-supported platforms upon which pier shed and bulkhead building structures were built to conduct maritime commerce. The substructure of the piers and bulkhead wharf, described in detail in Section 7 of the Embarcadero Historic District nomination, consists of vertically driven piles, topped by stringer and pile cap beams, which create the horizontal structural framework upon which pier decks rest. Beneath these structures, the tides of the San Francisco Bay ebb and flow. Pier substructures are defined to include pier aprons, which are constructed at the perimeter of piers, generally used to provide a pile-supported platform for ship berthing, an outdoor work area, and in more recent times a public access and recreation area. In most instances, pier aprons are constructed of wood and have a shorter life span, historically requiring more maintenance and repair than steel and concrete substructures.

Within this complex, the bulkhead wharf is an important feature. It is comprised of 23 individual sections that extend end to end throughout the historic district, adjacent and connected to the Seawall, which establishes the constructed edge of the waterfront between piers (see Figures 1 and 2). In addition, the bulkhead wharf plays an important role in defining the Embarcadero's urban form, which supports maritime, public access and commercial recreation/retail functions.

SCHEDULE 1

**ASBESTOS NOTIFICATION AND INFORMATION
NOTICE TO EMPLOYEES,
OWNERS, LESSEES, SUBLESSEES, AGENTS AND CONTRACTORS**

[Attachment on following page(s)]

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DRAFT

SCHEDULE 2
SUBSTRUCTURE REPORT(S)

[Attachment on following page(s)]

DRAFT

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SCHEDULE 3

FEMA Disclosure Notice

The Federal Emergency Management Agency ("FEMA") is revising Flood Insurance Rate Maps ("**FIRMs**") for San Francisco Bay Area communities. As part of this effort, FEMA plans to prepare a FIRM for the City and County of San Francisco for the first time. That process may have significant impacts for developing new structures and reconstructing or repairing existing structures on San Francisco's waterfront.

FIRMs identify areas that are subject to inundation during a flood having a 1% chance of occurrence in a given year (also known as a "base flood" or "100-year flood"). FEMA refers to an area that is at risk from a flood of this magnitude as a special flood hazard area ("**SFHA**").

On September 21, 2007, FEMA issued a preliminary FIRM of San Francisco tentatively identifying SFHAs along City's shoreline in and along the San Francisco Bay consisting of "A zones" (areas subject to inundation by tidal surge) and "V zones" (areas subject to the additional hazards that accompany wave action). These zones generally affect City property under the jurisdiction of the Port of San Francisco and other areas of the San Francisco waterfront, including parts of Mission Bay, Hunters Point Shipyard, Candlestick Point, Treasure and Yerba Buena Islands, and an area adjacent to Islais Creek.

FEMA prepares the FIRMs to support the National Flood Insurance Program ("**NFIP**"), a federal program that enables property owners, businesses, and residents in participating communities to purchase flood insurance backed by the federal government. The San Francisco Board of Supervisors has adopted a floodplain management ordinance governing new construction and substantial improvements in flood prone areas of San Francisco and authorizing the City's participation in NFIP (as amended, the "Floodplain Ordinance"). The Floodplain Ordinance imposes requirements on any new construction or substantial improvement of structures in city-designated flood zones that are intended to minimize or eliminate flood hazard risks. NFIP regulations allow a local jurisdiction to issue variances to its floodplain management ordinance under certain narrow circumstances, without jeopardizing the local jurisdiction's eligibility in the NFIP. However, the particular projects that are granted variances by the local jurisdiction may be deemed ineligible for federally-backed flood insurance by FEMA.

The federal legislation and regulations implementing the NFIP are located at 42 U.S.C. §§ 4001 et seq.; 44 C.F.R. Parts 59-78, §§ 59.1-78.14. FEMA also publishes "Answers to Questions About the NFIP" and FEMA Publication 186 entitled "Mandatory Purchase of Flood Insurance Guidelines." Additional information on this matter can be found on FEMA's website at the following links:

<http://www.fema.gov/plan/prevent/fhm/index.shtm>

<http://www.fema.gov/business/nfip/index.shtm>

Additional information about the San Francisco legislation can be found on the city's website (<http://www.sfgov.org>).



TEL: 415.274.0400
FAX: 415.274.0578

TTY: 415.274.0587
WEB: SFPORT.COM

ADDRESS: PIER 1
SAN FRANCISCO, CA 94111

LEASING APPLICATION PACKAGE

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PART I

LEASING APPLICATION

Please print legibly or type. Use attachments to provide complete and detailed information to facilitate Port review and approval process.

I. Proposed Tenant Legal Name /Business Type

Date: _____

A. Name/Address of Proposed Tenant

Full Legal Name of Proposed Tenant: _____

Residence Address: _____

E-mail address _____

Existing Business Name: _____

Business Address: _____

Telephone: _____

Fax: _____

How long at the Premises: _____

Contact Person: _____

Name

Title

Telephone

II. Legal Status

A. Fictitious Business Name Statement (If applicable):

Operating Name: _____

When/Where Filed? _____

Not applicable _____

B. Type of Business Entity:

____ Corporation ____ Mutual Benefit ____ Sub ____ Not-for-Profit

____ Partnership: ____ General ____ Limited

____ Limited Liability Company (LLC)

____ Limited Liability Partnership (LLP)

____ Sole Proprietor(s)

____ Franchise

____ Other _____

(explain)

C. If tenant is a corporation or LLC, please complete the following:

State of Incorporation: _____

Date of Incorporation: _____

Local Agent for Service of Process:

Name: _____

Address: _____

Phone Number: _____

List all officers and directors of the corporation or members of the LLC:

Name: _____

Title: _____

Name: _____

Title: _____

Name: _____

Title: _____

Attach a copy of the statement by domestic stock corporation.

D. If proposed tenant is a general or limited partnership, please list all general partners:

Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Name: _____

Address: _____

Date of Birth: _____

Social Security Number: _____

Attach a copy of the Articles of Organization.

E. Who will sign the lease?

Print Name _____

Print Title _____

(If tenant is a corporation, two signatories are required. Both must be corporate officers or persons who are authorized by the corporation to enter into contracts).

**F. Has the proposed tenant ever had a lease, license or other tenancy with the Port?
Identify the dates of this tenancy, location of tenancy, and facts concerning the
termination or expiration of the tenancy.**

G. For Property Manager Use Only:

Name & Date of Lease/License _____

Lease/License No. _____

Status of Account: _____

**III. Description of Proposed Term, Use, Area, Location, Activities and
Required Licenses or Permits.**

- A. Proposed Uses (including ancillary or support uses). Describe the operations and activities that will occur on the Premises, including both indoor and outdoor uses, on a separate attachment, if necessary. Provide a complete and detailed explanation to facilitate the Port's lease review and approval process. Explain if any of the proposed uses are water-dependent or bay-related.**

B. Requested amount of space (delineate by type of space—i.e. shed storage space, improved land, office space, and by amount of square footage):

C. Desired Location, if known (be specific-- i.e. pier building number, outdoor area, including nearest cross street). Include site map if available.

D. Term sought (months/years):

E. How many employees will be working on site in the course of normal daily operations?

F. Will proposed use require interior or exterior alterations, improvements, repairs or demolition on the Premises? Describe in detail all alterations, improvement or repairs proposed, including estimated square footage of interior and exterior areas to be constructed or renovated in an attachment, if necessary.

G. Will any of the types of work listed below be required for site preparation/ construction of tenant improvements, or on-going operations? Please provide explanation for any of the items checked below which will apply and list any permits required, if known:

Activity	Site Preparation	Ongoing Operations
Excavation (quantity in cubic yards)		
Fill (indicate if any pier repairs or new construction in or over the Bay is proposed)		
Utility installation or modification, including systems to handle sewage and storm water runoff		
Demolition		
Work on shoreline or over water		
Soil borings or groundwater wells		
Vehicle maintenance (including washing/oil change)		
Dredging		
Industrial manufacturing, production or processing		

H. If improvements are proposed, including the construction or placement of new structures, will they block views to the Bay?

Yes

No

Unknown

1. Will tenant bring soil or construction materials to the Premises, either for site preparation or as part of ongoing operations? List the type and volumes of material to be transported into and out of the facility.

J. Many activities may require approvals from other agencies, which may include those listed below. Please indicate if your proposed operation may require any of these or other permits, along with further details/explanation on a separate attachment:

☐ City of San Francisco Health Department
☐ Water Quality for groundwater wells/soil borings
☐ Hazardous Materials for use and/or storage of hazardous materials or waste
☐ Hazardous waste for soil excavation/management
☐ Solid waste management
☐ City of San Francisco Police Department
☐ Entertainment /Amplified Sound
☐ SF Bay Conservation Development Commission
☐ State of California Solid Waste Board
☐ Alcohol Beverage Control
☐ Bay Area Air Quality Management District
☐ Regional Water Quality Control Board (construction in or over water, storm water runoff
 from construction activities or on-going industrial operations)
☐ Army Corps of Engineers (construction in water or shoreline)
☐ Planning Commission Master Plan Referral
☐ Conditional Use Permit
☐ CEQA Environmental Review
☐ Other (List)

K. Will tenant use or store any hazardous material, or generate any hazardous waste (e.g. used oil, solvent, cleaning solutions) during site preparation or regular operations? If so, identify all such substances and operations and the quantities to be stored or used on the Premises. Please list any regulatory approvals required for these hazardous materials and waste operations on the Premises, as well as other environmental reviews, if known. Please provide this information on a separate attachment, accompanied by a detailed and complete explanation to facilitate the Port's lease review and approval process.

- L. Please list any permits or authorizations from environmental regulatory agencies currently or formerly held by applicant. If so, please provide details.
- M. Has the applicant ever been cited for a violation of environmental or health and safety laws, regulations, or permit requirements? If so, please provide details.
- N. List all materials and approximate quantities to be stored on premises. Attach additional sheets if necessary:
- O. Will the proposed use involve truck traffic to/from the Premises on a daily basis? If so, please describe the average number of daily truck trips
- P. What are the proposed days and hours of operation at the Premises?
- Q. Will the operations create significant levels of noise that can be heard from locations adjacent to Port property? If so, please indicate during what times this noise will occur and provide an estimate of the level in decibels from the closest non-Port site.

IV. FINANCIAL INFORMATION ABOUT PROPOSED TENANT

A. Financials/tax returns

The proposed tenant shall provide the Port with financial statements or income tax returns for the past three (3) years.

B. Bank References

(1) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

(2) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

C. Assets of proposed tenant

(1) List all real property in which you have an interest:

Value: \$ _____

Describe

Value: \$ _____

Describe

(2) List all automobiles in which you have an interest:

_____	Value: \$ _____
Year/Make/Model/License No.	
_____	Value: \$ _____
Year/Make/Model/License No.	

(3) List all other assets in which you have an interest:

_____	Value: \$ _____
Describe	
_____	Value: \$ _____
Describe	

(4) List any interest the proposed tenant has in any other business(es), and give addresses and phone numbers of each:

D. Liabilities of proposed tenant

List all liabilities of the proposed tenant (loans, mortgages, credit card accounts, etc.):

_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	
_____	Amount: \$ _____
Describe	

E. Bankruptcy

Has the proposed tenant ever filed for bankruptcy protection? (YES) _____ (NO) _____

When _____

Where? _____

If Yes, Explain Details: (e.g. Chapter 7, 11, 13) _____

Current Status of Bankruptcy:

Explain: _____

F. Previous business landlord:

Name of Prior Landlord: _____

Address: _____

Phone Number: _____
Dates of previous tenancy: _____
Address of previous tenancy: _____

Monthly Rent: _____
Reason for Leaving: _____

THIS APPLICATION MUST BE SIGNED, DATED AND ACCOMPANIED BY CASH OR CASHIER'S CHECK FOR THE SECURITY DEPOSIT IN AN AMOUNT EQUAL TO TWO (2) MONTHS' RENT. THE SECURITY DEPOSIT IS FULLY REFUNDABLE IF THE PARTIES DO NOT ENTER INTO A LEASE. THE APPLICANT HEREIN UNDERSTANDS AND AGREES THAT PAYMENT OF A SECURITY DEPOSIT SHALL IN NO WAY BE CONSTRUED AS AN AGREEMENT, OBLIGATION OR ACCEPTANCE TO LEASE BY THE SAN FRANCISCO PORT COMMISSION.

THE UNDERSIGNED APPLICANT, BEING THE PROPOSED TENANT HEREIN, HEREBY DECLARES UNDER PENALTY OF PERJURY THAT THE INFORMATION SET FORTH IN THIS APPLICATION FOR LEASE IS TRUE AND CORRECT.

PLEASE NOTE: (1) NO ALTERATIONS OR IMPROVEMENTS MAY BE INSTALLED IN THE PREMISES WITHOUT FIRST OBTAINING A BUILDING PERMIT FROM THE PORT ENGINEERING DEPARTMENT, and (2) NO CHANGE IN USE SHALL BE PERMITTED IN THE PREMISES WITHOUT AN APPROVED LEASE AMENDMENT.
IF INDIVIDUAL(s):

(Signature) Dated: _____
Print Name _____

(Signature) Dated: _____
Print Name _____

IF CORPORATION, PARTNERSHIP, LLC OR LLP,

Print Name of Entity

By: _____ Dated: _____
(Signature)

Name: _____
Title: _____

By: _____ Dated: _____
(Signature)

Name: _____
Title: _____

DID YOU REMEMBER TO INCLUDE:
Articles Of Organization
Statement of Domestic Stock Corporation
Financial Statements of Company or tax returns (three years)
Security Deposit (cash or cashiers check)

***YOUR APPLICATION FOR LEASE WILL NOT BE CONSIDERED UNTIL ALL
OF THE ABOVE REQUIRED ITEMS HAVE BEEN SUBMITTED TO THE
PORT.***

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**PERSONAL DATA QUESTIONNAIRE FOR
INDIVIDUALS AND MEMBERS OF PARTNERSHIPS**

Each person who is required to complete a Personal Data Questionnaire must submit a separate form.

NAME _____

NAME OF PROPOSED TENANT IF DIFFERENT FROM ABOVE: _____

OTHER NAMES USED: _____

Address: _____

Phone Number: _____

DATE OF BIRTH: _____ **SS#:** _____

DRIVER'S LICENSE NUMBER: _____ **STATE:** _____ **EXPIRES:** _____

HOME ADDRESS: _____

City State Zip
Telephone: _____

EMPLOYER: _____

Address: _____

Phone Number: _____

How Long: _____

NAME OF BUSINESS: _____

IF LESS THAN FIVE YEARS, PREVIOUS EMPLOYER _____

Address _____

City State Zip
Telephone: _____ **How long?** _____

Name of Spouse/Partner: _____

Address, if different from above: _____

Phone Number: _____
Spouse/Partners Employer: _____
Address: _____
Phone Number: _____

BANK REFERENCES

(1) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

(2) NAME OF BANK OR S&L: _____

Branch: _____

Address: _____

City State Zip

Telephone: _____ Contact Name: _____

Account # _____

Type of Account _____

LIST ALL REAL PROPERTY IN WHICH YOU HAVE AN INTEREST:

Describe Value: \$ _____

Describe Value: \$ _____

LIST ALL AUTOMOBILES IN WHICH YOU HAVE AN INTEREST:

Year/Make/Model/License No. Value: \$ _____

Year/Make/Model/License No. Value: \$ _____

LIST ALL OTHER ASSETS IN WHICH YOU HAVE AN INTEREST:

Describe Value: \$ _____

Describe Value: \$ _____

LIST ANY BUSINESS(ES) IN WHICH YOU HAVE AN INTEREST:

Name of Business: _____
Address: _____
Phone Number: _____
Nature of Interest: _____

Name of Business: _____
Address: _____
Phone Number: _____
Nature of Interest: _____

LIST ALL OUTSTANDING DEBTS (loans, mortgages, credit card accounts, etc.):

Describe Amount: \$ _____

Describe Amount: \$ _____

Describe Amount: \$ _____

Describe Amount: \$ _____

HAVE YOU EVER FILED FOR BANKRUPTCY PROTECTION? (YES) _____ (NO) _____

When? _____
Where? _____

If Yes, Explain Details: (e.g. Chapter 7, 11, 13)

Current Status of Bankruptcy:

Explain: _____

I declare under penalty of perjury that the information contained in this Personal Data Questionnaire is true and correct.

(Signature) Dated: _____
Print Name _____

PERSONAL DATA QUESTIONNAIRE FOR LEASE GUARANTORS

Name of Guarantor: _____
Address: _____

Phone Number: _____
Relationship to proposed tenant: _____

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AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION

The undersigned hereby authorizes the companies and/or individuals listed below and on the reverse side to release to the SAN FRANCISCO PORT COMMISSION (Pier 1, Accounting Department, San Francisco, CA 94111) all pertinent and confidential information concerning the credit standing or account status of:

Name of Proposed Tenant

Authorized Signature

Date: _____

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PART II & PART III

The following pages include information regarding the various City and County of San Francisco Ordinances and requirements for compliance of all Port Tenants.

Attached are:

PART II

1. **First Source Hiring Ordinance: Employer's Projection of Entry Level Positions**

PART III

2. **Human Rights Commission: Nondiscrimination Requirements under Chapter 12B and 12C Ordinances**
3. **Human Rights Commission: Form 3, DBE Ordinance Compliance Declaration**

Please review the attached information, as it is the tenant's responsibility to understand, adhere to, and submit the required information listed hereinafter.

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Edwin M. Lee, Mayor

Office of Economic and Workforce Development
Workforce Development Division**PART II****NON-CONSTRUCTION FIRST SOURCE EMPLOYER'S PROJECTION OF ENTRY LEVEL POSITIONS**

By signing this form, employers agree to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code.

As an indication of good faith efforts to comply with First Source, the Employer must fill out this form at commencement of contract/tax year to indicate:

- For a Tenant/Sub-tenant, the number of Entry Level Positions in the company that are currently filled and those that are currently available on premises leased by the City of San Francisco.
- For the successful Developer, Contractor, or Subcontractor, Entry Level Positions that are currently filled and those that will be available during construction work.
- For a tenant of a private commercial project that falls under Chapter 83 provisions of the City Administrative Code, the number of Entry Level Positions that are currently filled and those that will be available within the lease holding business at project address.
- For companies applying for the Biotech Payroll Tax Exclusion and Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion, the number of Entry Level Positions that are currently filled and those that will be available in the current tax year.
- For a successful organization awarded a City contract in excess of \$50,000, the number of Entry Level Positions that are currently filled and those that will be available within the business or non-profit organization.
- If positions listed are subject to collective bargaining agreements.

Note: If an Entry Level Position becomes available during the term of the lease and/or contract, Employer must notify the First Source Hiring Administration.

Entry Level Position means a non-monogerial position that requires either no education above a high school diploma or certified equivalency, or less than two (2) years of training or specific preparation. Apprenticeship positions should be included.

Type of Employer (check one):

- | | |
|--|--|
| ☐ Tenant | ☐ Subtenant |
| ☐ Developer | ☐ Biotech Payroll Tax Exclusion applicant |
| ☐ Contractor | |
| ☐ Subcontractor | ☐ "Scene in San Francisco" Rebate applicant |
| ☐ Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion applicant | |

Identify Project or Construction Project (if applicable):

City Department (if Contract or Lease):

Name of Employer:

Contact Person:

Street Address:

City:

State:

Zip:

Telephone:

Fax:

Email:

Signature of authorized employer representative

Date

Entry-Level Position Title	Number Currently Filled	Number Currently Available	Number Projected to Become Available in the next 12 Months	Estimated Date of Next Available Position	Subject to Collective Bargaining? (Yes/No)

Please fax, email, or mail this form SIGNED to:

Attn: Business Services

Tel: 415-701-4848

Fax: 415-701-4897

FIRST SOURCE
 HIRING
 CITY & COUNTY OF SAN FRANCISCO



City and County of San Francisco Human Rights Commission

PART III

San Francisco Nondiscrimination Ordinance - SF Administrative Code Chapter 12B

Sec. 12B.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions; Definitions.

Sec. 12B.2. Nondiscrimination Provisions.

Sec. 12B.3. Human Rights Commission Empowered.

Sec. 12B.4. Nondiscrimination Guidelines.

Sec. 12B.5. Chapter Applies Only to Discriminatory Employment Practices.

Sec. 12B.5-1. Nonapplicability, Exceptions and Waivers.

Sec. 12B.6. Severability.

SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

(b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any contract or property contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be

deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(c) Definitions. As used in this Chapter the following words and phrases shall have the meanings indicated herein:

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years and has not attained the age of 65 years. For the purposes of this Chapter, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his or her age, if such person has attained the age of 40 years and has not attained the age of 65 years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Chapter.

"Amend" shall mean to substantively change the terms of a pre-existing contract, and shall not include amendments to decrease the scope of work or the amount to be paid under a contract. Construction change orders shall not be construed as contract amendments for the purposes of this Chapter.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" shall mean a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to state or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

(d) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States.

SEC. 12B.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute a material breach of contract.

In the performance of a contract the contractor agrees as follows:

(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Chapter shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operations of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse

of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 12B.6 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.

(e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the

City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Chapter.

(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that the contractor or subcontractor has willfully violated such nondiscrimination provisions; or

(2) A finding by the California Fair Employment and Housing Commission that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act or the nondiscrimination provisions of this Chapter, provided that the California Fair Employment and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

(4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in

the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

(7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(j) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(k) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Willful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;

(B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract.

SEC. 12B.3. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 here of.

SEC. 12B.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be

required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Chapter.

SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Chapter shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Chapter.

SEC. 12B.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this

Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12B.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within 5 days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12B.5-1(d) has been or is proposed to be

granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12B.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12B.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12B.5-1(d);

(5) Nothing in this Section 12B.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transaction(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 12B.1(b) and 12B.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Chapter.

SEC. 12B.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or

regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect.

SF Administrative Code Chapter 12C

Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.

Sec. 12C.2. Definitions.

Sec. 12C.3. Nondiscrimination Provisions.

Sec. 12C.4. Human Rights Commission Empowered.

Sec. 12C.5. Funding.

Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.

Sec. 12C.6. Severability.

Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter, against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

Sec. 12C.2. Definitions.

As used in this Chapter the term:

"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" is a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in

nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97)

Sec. 12C.3. Nondiscrimination Provisions.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 12C.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 12C.3, and failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Chapter, and on request provide

evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Chapter. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission.

(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that contractor or subcontractor has wilfully violated such nondiscrimination provisions.

(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 12C.3(d) and/or Section 12C.3(g).

(3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12C.3(c)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.

(6) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(8) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(d) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(e) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(f) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be irresponsible under Section 12C.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12C.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

Sec. 12C.4. Human Rights Commission Empowered.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.3 thereof. (Amended by Ord. 84-77, App. 3/11/77)

Sec. 12C.5. Funding.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance. (Amended by Ord. 84-77, App. 3/11/77)

Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer

has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12C.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12C.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by

departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12C.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12C.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12C.5-1(d);

(5) Nothing in this Section 12C.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transaction(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

Sec. 12C.6. Severability.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law,

rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 84-77, App. 3/11/77; Ord. 286-97, App. 7/18/97)

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City and County of San Francisco
A. Human Rights Commission

HRC ATTACHMENTS 3: FORMS
Leases

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 12B and 12C of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized
Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number
(FEIN): _____

Date: _____



CITY AND COUNTY OF SAN FRANCISCO
CONTRACT MONITORING DIVISION

S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C
DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS
(CMD-12B-101)

► Section 1. Vendor Information

Name of Company: _____

Name of Company Contact Person: _____

Phone: _____ Ext.: _____ Fax: _____

E-mail Address: _____

Vendor Number (if known): _____

Federal ID or Social Security Number: _____

Approximate Number of Employees in the U.S.: _____

Are any of your employees covered by a collective bargaining agreement or union trust fund?

☐ Yes

☐ No

Union name(s): _____

► Section 2. Compliance Questions

Question 1. Nondiscrimination – Protected Classes

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? **Please note:** a "YES" answer is required for compliance. Please answer yes or no to each category.

- | | | | | | |
|-------------------|------------------------------|-----------------------------|--|------------------------------|-----------------------------|
| • Race | ☐ Yes | ☐ No | • Sex | ☐ Yes | ☐ No |
| • Color | ☐ Yes | ☐ No | • Sexual orientation | ☐ Yes | ☐ No |
| • Creed | ☐ Yes | ☐ No | • Gender identity (transgender status) | ☐ Yes | ☐ No |
| • Religion | ☐ Yes | ☐ No | • Domestic partner status | ☐ Yes | ☐ No |
| • National origin | ☐ Yes | ☐ No | • Marital status | ☐ Yes | ☐ No |
| • Ancestry | ☐ Yes | ☐ No | • Disability | ☐ Yes | ☐ No |
| • Age | ☐ Yes | ☐ No | • AIDS/HIV status | ☐ Yes | ☐ No |
| • Height | ☐ Yes | ☐ No | • Weight | ☐ Yes | ☐ No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

☐ Yes ☐ No

Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

☐ Yes ☐ No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

☐ Yes ☐ No

*The term "Domestic Partner" includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

If you answered "NO" to both Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested.

If you answered "YES" to either or both Questions 2A and 2B, please continue to Question 2C.

Question 2. (continued)

- C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	☐	☐	☐	☐
• Dental Insurance	☐	☐	☐	☐
• Vision Insurance	☐	☐	☐	☐
• Retirement (Pension, 401(k), etc.)	☐	☐	☐	☐
• Bereavement Leave	☐	☐	☐	☐
• Family Leave	☐	☐	☐	☐
• Parental Leave	☐	☐	☐	☐
• Employee Assistance Program	☐	☐	☐	☐
• Relocation & Travel	☐	☐	☐	☐
• Company Discount, Facilities Events	☐	☐	☐	☐
• Credit Union	☐	☐	☐	☐
• Child Care	☐	☐	☐	☐
• Dependent Life Insurance	☐	☐	☐	☐
• Other	☐	☐	☐	☐

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (CMD-12B-102) with all necessary attachments, and have your application approved by the Contract Monitoring Division. For more information, see Rules of Procedure section II B or contact the CMD.

> Section 3. Required Documentation**YOU MUST SUBMIT SUPPORTING DOCUMENTATION**

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a letter from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Equal Benefits Documentation Guide at <http://sfqsa.org/modules/showdocument.aspx?documentid=9560> or contact the CMD.

Have you submitted supporting documentation for each benefit offered?

☐ Yes ☐ No

> Section 4. Executing the Document

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year _____, at _____, _____ (City) _____ (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

→ Submit this form **and supporting documentation** to: Contract Monitoring Division, 30 Van Ness Ave., Suite 200, San Francisco, CA 94102-6020, or to CMD.EqualBenefits@sfgov.org or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: www.sfgov.org/CMD.

☎ For assistance please contact the Contract Monitoring Division at 415-581-2310.

CMD-12B-101 (03-13)



MEMORANDUM

August 8, 2013

TO: MEMBERS, PORT COMMISSION
Hon. Doreen Woo Ho, President
Hon. Kimberly Brandon, Vice President
Hon. Willie Adams
Hon. Leslie Katz
Hon. Mel Murphy

FROM: Monique Moyer *MMoyer*
Executive Director

SUBJECT: Informational Presentation by (1) San Francisco Waterfront Partners III, LLC, and (2) TMG Pier 38 Partners, LLC, a joint venture partnership consisting of TMG Partners and Premier Structures, the respondents to the Request for Proposals for the Pier 38 Bulkhead Rehabilitation Project, located at Delancey Street and The Embarcadero

DIRECTOR'S RECOMMENDATION: Informational Item – No Action Required

SUMMARY

On March 25, 2013 the Port received real estate proposals from two development teams: 1) San Francisco Waterfront Partners III, LLC (SFWP) and 2) TMG Pier 38 Partners, LLC, a joint venture partnership consisting of TMG Partners and Premier Structures (TMG). At the Port Commission's June 11, 2013 meeting, each development team presented its qualifications and visions for the Pier 38 bulkhead building rehabilitation. On June 18, 2013, an evaluation panel interviewed the two development teams.

The intent of this meeting is to allow the development teams to expand upon their prior presentations specifically with respect to their visions for the bulkhead building rehabilitation and potential long-term redevelopment of the entire Pier 38.

Following these presentations, Port staff intends to consider the evaluation panel report, evaluate the proposals and return to the Port Commission in September 2013 with a recommendation to award the development opportunity for Pier 38.

THIS PRINT COVERS CALENDAR ITEM NO. 13A

BACKGROUND

Port staff is entering into the final stage of its solicitation process to select a master tenant/developer for Pier 38. Recent Port Commission staff reports provide Pier 38 background information:

- **Pier 38 Closure:** Port staff reported on the background regarding the eviction proceedings and site conditions that led to closure of Pier 38 in October 2011.¹ In brief, on August 1, 2011, the Port took possession of Pier 38 from the Pier 38 Maritime Recreation Center and Carl Ernst. On September 2, 2011, the Port's Chief Harbor Engineer declared Pier 38 shed, office spaces, and north apron deck unsuitable for any occupancy due to existing health and safety violations. Occupants were asked to vacate the premises on September 30, 2011. By October 20, 2011, all occupants housed in the Pier 38 bulkhead building and pier shed were vacated.
- **Pier 38 Reuse Options:** In January 2012, Port staff reported on building occupancy options to bring Pier 38 into Code Compliance.²
- **Pier 38 Solicitation Options:** On September 11, 2012, Port staff reported on the trade-offs between soliciting a development entity to rehabilitate and re-tenant the Pier 38 bulkhead building only versus an entity to redevelop the entire Pier 38 facility.³
- **Port 38 Solicitation Approval:** On September 25, 2013, Port staff received approval to issue a request for proposals for the Pier 38 bulkhead building and limited pier shed improvements for re-occupancy while qualifying this entity to consider the long-term reuse of the entire facility or the majority of the pier structure.⁴ The request for proposals was issued on November 16, 2012. Responses were received on March 25, 2013.
- **Port 38 RFP Respondents' Presentation:** On June 11, 2013, the respondents to the request for proposals presented their qualifications and visions for the Pier 38 bulkhead building rehabilitation.⁵

¹ <http://www.sfport.com/modules/showdocument.aspx?documentid=2403>

² <http://www.sfport.com/modules/showdocument.aspx?documentid=3231>

³ <http://www.sfport.com/modules/showdocument.aspx?documentid=4638>

⁴ <http://www.sfport.com/modules/showdocument.aspx?documentid=4720>

⁵ <http://www.sfport.com/modules/showdocument.aspx?documentid=6313>

REQUEST FOR PROPOSALS

The ideal candidate for the Pier 38 project will have experience with historic rehabilitation of waterfront structures, an ability to identify and secure target tenants, and an ability to operate and maintain real estate projects once completed. In addition, such a candidate would have a proven ability of working with public agencies to achieve results desired by the Port. A candidate must provide a short-term implementation strategy of the Pier 38 bulkhead building and demonstrate its qualifications to undertake developing the remaining pier structure over the long-term. Project objectives are stated in Attachment 1 hereto.

SUMMARY OF PHASE 1 PROPOSALS

Pier 38 is situated within a quarter mile of both AT&T Park to the south and Piers 30-32 to the north, the location of a proposed Warriors' arena complex. To the immediate north is the newly completed Brannan Street Wharf, a 57,000 square foot public park, and to the immediate south is the 700-slip marina known as the South Beach Harbor at Pier 40. Across the Embarcadero is the South Beach neighborhood consisting of a mix of older and newly-developed mixed-use residential and commercial buildings. Within this context, the aforementioned developers, San Francisco Waterfront Partners III, LLC (SFWP) and TMG Pier 38 Partners, LLC (TMG) have submitted proposals to rehabilitate and re-tenant the Pier 38 bulkhead building.

SFWP's vision includes rehabilitation of the Pier 38 bulkhead "as part of a phased program" for the "ultimate rehabilitation of the entire pier. Phase 1 will be carefully developed so that it may be integrated into the future project in a way that minimizes disruption (and) redundant investment to the greatest extent possible." SFWP proposes reuse of the first floor of the bulkhead building for restaurant and café uses and the second floor for office uses, as shown in Attachment 2. SFWP has provided a letter of interest from The Slanted Door Group for the creation of an "Asian fast food" casual café and a business plan for a San Francisco Beer Garden, both on the north side of the bulkhead building facing the Brannan Street Wharf. For the office area, SFWP has provided a letter of interest from SOMA Central for creation of a "tech hub". The shed would be used for parking with up to 55 valet parking spaces. SFWP would repair the existing dock on the north side of Pier 38 to allow short-term and transient small boat berthing. SFWP would enhance public access by removing a portion of the ground floor office space on the south side of the structure and creating a breezeway that connects the Embarcadero to the Pier 38 south apron creating a port walk that would proceed through the Pier 38 shed to a reconfigured north apron that connects with the new Brannan Street Wharf. SFWP proposes a \$10.6 million investment for the bulkhead building rehabilitation and re-tenanting project.

TMG's vision for Pier 38 is based on "immediate revitalization of the Pier 38 Bulkhead with a mix of public, office and maritime uses, supported physical improvements that fully respect the historic character of the setting." Accordingly, the TMG approach is focused on limiting initial investment to meet accessibility and code requirements in order to quickly activate the bulkhead building with new uses. As shown in Attachment 3, the southern portion of the bulkhead building's first floor and the western portion of

the mezzanine area would be used for office space. TMG indicates that office uses would be oriented to tech and creative tenants and they have been in discussions with several of the former tenants. The northern portion of the bulkhead building's first floor would be used as an informal dining area, including an area for a revolving food truck program within the shed. TMG has been in discussions with Off the Grid food truck organization for its operation. Shed uses would include approximately 40-60 parking spaces. There would also be a maritime area which would involve reuse of the pier's north apron as a visitor-serving guest/water taxi dock. TMG proposes a \$6.9 million investment for this bulkhead building rehabilitation and re-tenancing project.

FOCUS OF THIS AGENDA'S PRESENTATIONS

Port staff has determined preliminarily that both respondents to the request for proposals are qualified to undertake the Phase 1 rehabilitation and re-tenancing of the Pier 38 bulkhead building. To help the Commission and staff to further assess their proposals, Port staff has requested each of the development teams to further describe its vision for Phase 1 rehabilitation and re-tenancing. Specifically, the development teams have been asked to address project timing, incorporation of local hiring and local business enterprises into their project, and the price and term of a Phase 1 stand-alone project. In addition, the development teams have been asked to describe their overall vision of the redevelopment of the entire pier (Phase 2) with regard to development phasing and regulatory feasibility.

NEXT STEPS

Port staff expects to complete the submittal review and return to the Port Commission with an informational presentation describing the developer selection process and recommending the best qualified Pier 38 developer at the Port Commission's September 10, 2013 meeting. This will be followed by an action item to consider approval of the best qualified Pier 38 developer at the September 24, 2013 meeting. The following factors will inform the staff's recommendation of which respondent is best qualified and should be selected for negotiations:

- Written submittals
- Interviews
- Evaluation and scoring by evaluation panel
- Review of financial materials
- Presentations

The Port Commission, upon considering the staff recommendation, could then award the development opportunity to a respondent. Thereafter, the first step would be to negotiate an exclusive negotiations agreement (ENA), consistent with the Port Commission's direction in awarding the development opportunity. Once in the ENA period, the selected developer and the Port would formulate a project description, negotiate transaction terms, and seek regulatory approvals. As these aspects are negotiated, Port staff would present them to the Port Commission for review, comment and direction by the Port Commission.

Port staff is pleased to have the opportunity for each development team to present a more detailed summary of their respective visions to the Port Commission and the public.

Prepared by: John Doll, Project Manager
Planning & Development

For: Byron Rhett, Deputy Director
Planning & Development

Attachments:

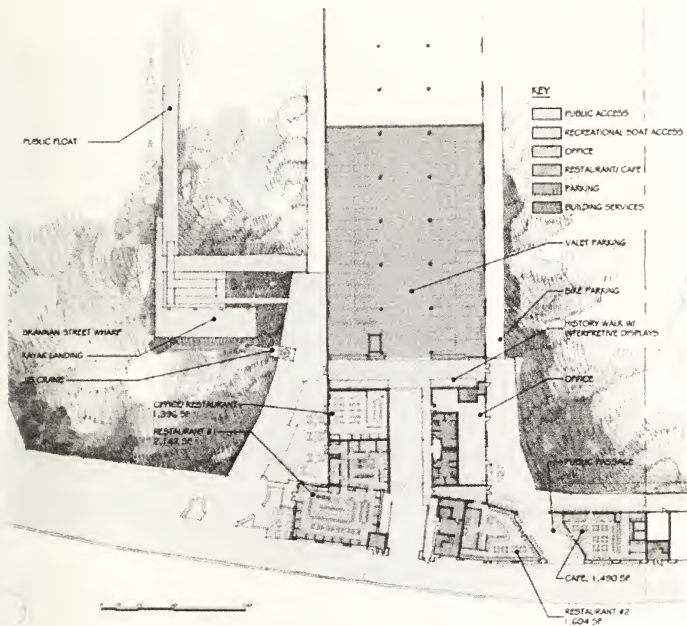
- 1) RFP Project Objectives
- 2) SFWP Site Plan (Ground Floor)
- 3) TMG Site Plan (Ground Floor)
- 4) Summary of Development Programs for Bulkhead (Phase 1)

Attachment 1 – RFP Project Objectives

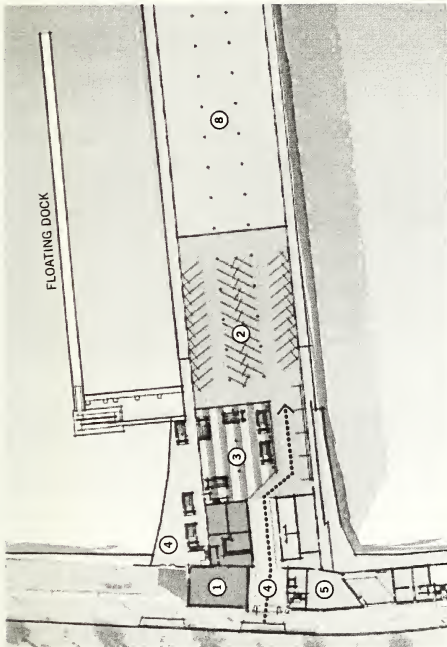
The request for proposals specifically included these project objectives:

- Repair the Pier 38 bulkhead building which may include: remedy structural deficiencies, replace or repair mechanical, electrical and plumbing systems, and construct any other improvements, including egress and ADA, needed to meet the City's building code requirements as well as other regulatory requirements, including consistency with the Secretary Standards.
- Develop the most effective implementation strategy to quickly re-tenant the Pier 38 bulkhead building in order to achieve the Port's goal of bringing it back into economic use and provide an on-going revenue stream to the Port.
- Encourage the re-tenanting of the Pier 38 bulkhead building to include: office, high technology uses, visitor-serving commercial, entertainment and cultural uses, and, maritime uses that complement adjacent waterfront development.
- Continue the redevelopment of the South Beach waterfront from the Bay Bridge to AT&T Ballpark, by reviving this historic structure, and helping knit Pier 38 into the South Beach neighborhood by bringing people and business activity to the waterfront.
- Demonstrate how the short-term Pier 38 bulkhead building rehabilitation will not inhibit a long-term reuse of Pier 38 (i.e., ensure that the short-term construction and operation would not hinder possible subsequent redevelopment of the entirety or majority of Pier 38).
- Develop a plan to improve the physical appearance of the bulkhead building and pier shed.
- Require that any adaptive reuse will be consistent with the Secretary of Interior's Standards for the Treatment of Historic Properties.
- Require a sustainable development program that minimizes the reliance on private automobiles, uses energy efficiently and, as possible, includes alternative energy sources that comply with the City's Green Building Standards.
- Secure private financial investment to rehabilitate and revive the Pier 38 bulkhead building in the near term.
- Provide business and employment opportunities for local workers and businesses during the design, construction and operation phases of the Pier 38 bulkhead building.
- Provide security for the entire Pier 38.

Attachment 2-- SFWP Site Plan:



Attachment 3-- TMG Site Plan:



1. Retail/Dining
2. Parking
3. Public Access/Food Truck
4. Public Access/Guest Dock & Entry
5. Office

Attachment 4: Summary of Development Programs for Bulkhead (Phase 1)

	SF Waterfront Partners	TMG Pier 38 Partners
Occupied Areas:		
Office	19,540	19,515
Retail/Restaurant (a)	<u>8,325</u>	<u>6,800</u>
Subtotal	27,865	26,315
Other Areas:		
Parking	18,843	22,400
Maritime (approx)	6,000	2,400
Public Access (b)	<u>15,868</u>	<u>15,400</u>
Subtotal	40,711	40,200
Total Sq. Ft.	68,576	66,515

a) SFWP assumes 1st floor shown as office/ restaurant is leased to restaurant or retail use.

TMG proposal is for informal dining area serving food truck patrons.

b) TMG public access includes 6,000 sq. ft. for food truck parking + entry area to food truck parking area.



SAN FRANCISCO PORT COMMISSION

**AUGUST 13, 2013
MINUTES OF THE MEETING**

GOVERNMENT
DOCUMENTS DEPT

SEP - 6 2013

MEMBERS, PORT COMMISSION
HON. DOREEN WOO HO, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. WILLIE ADAMS
HON. LESLIE KATZ
HON. MEL MURPHY

SAN FRANCISCO
PUBLIC LIBRARY

MONIQUE MOYER, EXECUTIVE DIRECTOR
AMY QUESADA, COMMISSION SECRETARY

CITY & COUNTY OF SAN FRANCISCO PORT COMMISSION

MINUTES OF THE MEETING AUGUST 13, 2013

1. CALL TO ORDER / ROLL CALL

Port Commission Vice President Kimberly Brandon called the meeting to order at 2:05 p.m. The following Commissioners were present: Kimberly Brandon, Willie Adams and Mel Murphy. Commissioner Katz arrived at 2:35 p.m. Commissioner Doreen Woo Ho was not present.

2. APPROVAL OF MINUTES – July 9, 2013

ACTION: Commissioner Adams moved approval; Commissioner Murphy seconded the motion. All of the Commissioners were in favor. The minutes of the July 19, 2013 meeting were adopted.

3. PUBLIC COMMENT ON EXECUTIVE SESSION

4. EXECUTIVE SESSION

A. Vote on whether to hold closed session.

ACTION: Commissioner Adams moved approval; Commissioner Murphy seconded the motion. All of the Commissioners were in favor.

At 2:05 p.m., the Commission withdrew to executive session to discuss the following matters:

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion and Action Item)

- a. Discuss existing litigation matter pursuant to Sections (a) and (d) of California Government Code Section 54956.9 and San Francisco Administrative Code section 67.10(d)(1)

City and County of San Francisco vs. Distillery No. 209 LTD. Napa, California (San Francisco Superior Court Case No. CGC-11-515550; filed October 31, 2011)

(2) CONFERENCE WITH LEGAL COUNSEL AND REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8. *This session is closed to any non-City/Port representative:

- a. Property: Pier 38, located at Delancey Street and The Embarcadero

Person Negotiating: Port: Byron Rhett, Deputy Director, Planning and Development

*Negotiating Parties: San Francisco Waterfront Partners III, LLC: Simon W.R. Snellgrove

*Negotiating Parties: TMG Pier 38 Partners, LLC, a joint venture of TMG Partners and Premier Structures: Michael Covarrubias

- b. Property: Seawall Lot 322-1, an approximately 37,810 square foot rectangular land parcel bounded by Broadway, Front and Vallejo Streets; Assessor's Block 0140, Lot 7, located at the corner of Front and Broadway Streets.

Person Negotiating: Port: Byron Rhett, Deputy Director, Planning and Development; Jonathan Stern, Assistant Deputy Director, Planning and Development; and Ricky Tijani, Development Project Manager, Planning and Development

*Negotiating Parties: MOH: Mayor's Office of Housing: Teresa Yanga, Director of Housing Development; Anne Romero, Project Manager

5. RECONVENE IN OPEN SESSION

At 3:25 p.m., the Port Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Katz moved approval to reconvene in closed session; Commissioner Adams seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Katz reported that the Port Commission unanimously approved the settlement agreement with Distillery No. 209 Ltd. Napa, California as described in Item 4A(1)(a) and moved approval not to disclose any other information discussed in closed session. Commissioner Adams seconded the motion. All of the Commissioners were in favor.

6. PLEDGE OF ALLEGIANCE

7. ANNOUNCEMENTS: The Port Commission Secretary announced the following:

- A. **Announcement of Prohibition of Sound Producing Electronic Devices during the Meeting:** Please be advised that the ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing of or use of a cell phone, pager, or other similar sound-producing electronic device.
- B. **Announcement of Time Allotment for Public Comments:** Please be advised that a member of the public has up to three minutes to make pertinent public comments on each agenda item unless the Port Commission adopts a shorter period on any item.

8. PUBLIC COMMENT ON ITEMS NOT LISTED ON THE AGENDA

Carey Dahl - I'm an employee of Darling International at Pier 92 at the Port of San Francisco. I'm a member of the International Longshore and Warehouse Union Local Six. Willie Adams is our international secretary treasurer. We are here to bring to the commission's attention four issues, environment related, that we have been working with your staff at Darling International at Pier 92. I'm going to list those four items quickly. If you have questions, I'm more than willing to do my best to answer them. The four issues we have are storm drains on Amador, on top of which we are loading railcars full of our main product, which is yellow grease. Those storm drains are largely unprotected. We do not have a retaining wall between our loading area and the storm drains. The tank farm inside the walls of the facility has a retaining wall around it, about which you guys were briefed when the biodiesel amendment to the lease for Darling International was negotiated in 2009 and 2010. That retaining wall is in a terrible state of condition and certainly would not be able to retain or contain a spill of one of our very large tanks. The third issue is one of recycling and composting. Our facility is not up to city code around those requirements. We don't do any composting at Darling International. Finally, the odor complaint hotline, which the company has a plan that is on file attached to the lease, where they offer solutions to the problems of odors wafting over the neighboring community. They're supposed to have a hotline, a 1-800 number. It has been out of service for at least two months, maybe longer. It came to my attention two months ago, at which point we notified the company as quickly as we could. On all of these issues, we've been working towards solutions with the company since 2010. We've been notifying them, leaving a paper trail. As of this year, we got in contact with the Port staff. We've been working with Shannon Alford and with Richard Berman. I'm happy to report that they're doing a great job. They're very responsive and professional in working with us. They came down to our site, did an inspection and spent good time with us to understand the issues. I just wanted to keep you guys briefed. We're working towards viable solutions that help the company be a good environmental steward but also address the concerns of the surrounding community about the environment. Lastly, a while back we had a question about prevailing wage. I want to publicly thank both Peter Dailey and Jeff Bauer for their very professional response on that issue with us.

9. EXECUTIVE

A. Executive Director's Report

Monique Moyer - I want to start by acknowledging Commissioner Brandon. At the last meeting, it had skipped my notice that you had started your new term with us because it was such a continuum. I would like to take a minute and acknowledge all that you've done for the Port in all of the time that you've been with us. Thank you for continuing to do it. For those of you that don't know, Commissioner Brandon was first appointed to the Port Commission in 1997 by then mayor Willie Brown. She has been working hard with Port staff and the Port Commissioners through almost anything that could begin to be described as a renaissance at the Port. As you may recall, the Waterfront Land Use Plan EIR

was certified in 1997 and we were able to begin developing Port property and turning into some great public space and reuse.

There aren't too many people that have been here on the Port staff and certainly not on the commission to have seen that change as close as you have, commissioner. Without your championship and your guidance, it's hard to know what it would be today. Certainly you can't not be on the promenade today and see all the disparate people that are coming. We seem to be flooded with foreign languages again right now, which is always kind of fun. People are heading all over up and down the waterfront from Pier 48 north to Fisherman's Wharf.

I want to thank you for your stewardship, your guidance, and the incredible amount of time that you give to this. I know you have a lot of other charities and nonprofits that you're part of and that you continue to be so engaged with the Port is a great gift to San Francisco. On behalf of all of us on the Port, please forgive me for not saying this in July and welcome to your new term. Thank you so much for being willing to serve and for agreeing to chair today's meeting. We appreciate that as well.

Commissioner Brandon - Thank you.

- Forest City Place-Making Event at Pier 70: Urban Air Market – August 18, 2013

It has long been a goal of the Port to reactivate the Pier 70 site, which is almost 68 acres. It's been a very long time since that property saw the types of public that used to be there when she was an active shipyard, especially during World War II.

As part of choosing Forest City Development as our developer of the waterfront property there, one of the things that was attractive about them, among many, is their sense of place making and the work that they've been doing, spearheading that and some of their other development projects. Certainly that is a big part of what we hope to see at Pier 70, to have that dream realized.

They've already begun, even though they are not officially holders of the property. They've had some great ideas that they've brought forward to the Port to implement, and the first of which is to hold something called the Urban Air Market this coming Sunday, August 18, 2013 at Pier 70 in Building 12 from 11:00 a.m. to 6:00 p.m. For those of you that are not familiar with what the Urban Air Market is, it's a San Francisco based event that is described as being a curated marketplace for sustainable design. Place making being one of the new terms. Curated marketplace is another new term. Effectively it's a festival of 120 local sustainable vendors that will be offering clothing, jewelry, accessories, artwork, home décor, beauty products, etc. It already takes place twice a year in Hayes Valley. We are proud to welcome this festival to the eastside of the city to Pier 70.

As far as we know, this will be the first time that the public has been able to be in Building 12 since she opened in 1941. So there was probably some public in and about during the World War II years, but not much, and certainly it's a great coup for us to be able to do this. We're most grateful to Forest City for helping us bring Urban Air Market to Pier 70.

As part of the one day event, there will be a popup art gallery by our very own Noonan Building artist. There will be food and fashion trucks. There will be live music. A beer and wine garden. A kids' zone with craft activities by the Bayview organization SCRAP and other interactive booths. Both of our developers, Forest City Development and Orton Development, Inc. will be giving tours on their proposed development projects. We hope that it will be a first of many great activities in Pier 70 as we continue to plan for its development and reuse.

- ILWU and Port Partner for "LaborFest" and Port's 150th Anniversary Celebration – September 2, 2013 at Longshoremen's Hall, 301 Beach Street, San Francisco

The 19th annual LaborFest , which is happening on Labor Day, is an annual celebration in San Francisco. It's put on by the ILWU Local 10 at their union hall. It's going to be held on Labor Day, Monday, September 2, 2013 from 11:00 a.m. to 5:00 p.m. It's a combination annual LaborFest and a celebration of the Port's 150th Anniversary. The Local 10 labor hall is located at 301 Beach Street, which is between Mason and Taylor Street up in the Fisherman's Wharf area.

LaborFest is open and free to the public and much like the event I just talked about, there will be children's activities. There will be live music, food vendors. There will be an exhibit of the 1934 and 1948 strikes. An exhibit of the Bethlehem Shipyard. A one act play by Ian Ruskin on Harry Bridges. A film of the 1974 Bill Moyers interview of Harry Bridges and lots of other great things. LaborFest runs from July 5th to Labor Day, which signifies Bloody Thursday from the 1934 strike. It's been running since 1994. There are LaborFests in many places in the world such as in Tokyo and Osaka, Japan, Istanbul and Ankara, Turkey. The first one just happened in Cape Town, South Africa as well as Buenos Aires and El Alto, Bolivia.

We're very proud to be participating on this and we're grateful to ILWU for including us in their celebration recognition of our 150th anniversary. We hope to see many of you there on Monday Labor Day.

- Bay Area Association of Disabled Sailors and South Beach Yacht Club Hosts the 2013 North American Combined Access Class Championships - September 3-6, 2013 at South Beach Harbor -

On September 3-6, 2013, there will be an event put on by the Bay Area Association of Disabled Sailors in combination with the South Beach Yacht Club. The South Beach Yacht Club is hosting the 2013 North American Combined Access Class Championships. It is a sailing race for people who need special access to their vessels. It is for the abled and the disabled, but they race a Liberty Access dinghy, so it should be pretty exciting.

The Bay Area Association of Disabled Sailors is the only Bay Area nonprofit that provides accessible sailing opportunities to people regardless of their disability, experience, age, or financial resources. They've been operating at Pier 40 for 25 years. In 2012, they started a program for Wounded Warriors where they help disabled vets learn how to sail for the first time. We're very proud of their achievements. We are helping to sponsor their event. We hope everyone will come and support them.

- Pier 70 Crane Cove Park Design Review - September 9, 2013, 4:30 p.m. Site Visit & 5:30 p.m. Design Review at Noonan Building

On September 9, 2013, is a joint meeting of the waterfront design advisory committee with the San Francisco Bay conservation and development commission's design review board. The purpose of the meeting is to review the designs for Crane Cove Park at Pier 70. The meeting will take place on September 9th at Pier 70. It will start at 4:30 with a tour of the Crane Cove Park area and then a design review meeting at 5:30 in the Noonan Building, which is at the foot of 20th Street. More information is posted on our website at sfport.com/cranecovepark.

- California Preservation Foundation's 30th Annual Historic Preservation Awards Ceremony: Port of San Francisco Recipient of Award for the Reconstruction of the Historic Pier 29 Bulkhead – September 27, 2013, 6:00 p.m. at Merchant's Exchange Building, 465 California Street, San Francisco

The next event is an award for the Port, which is really quite gratifying. The California Preservation Foundation is celebrating their 30th Annual Historic Preservation Awards Ceremony. They have selected the Port of San Francisco as an award recipient for our work on Pier 29. The event is going to be held on September 27th at 6:00 p.m. in the Julia Morgan Ballroom at the Merchants Exchange at 465 California Street. The Port will receive a California Preservation Award for the reconstruction of the historic Pier 29 bulkhead. As you know, Pier 29 is one of the 14 piers that is listed on the Embarcadero historic district. This award recognizes the challenges the Port faced as a result of the four-alarm fire which happened June 20, 2012 and our stewardship that we demonstrated in completing a faithful reconstruction of the pier in accordance with the Secretary of the Interior standards for the treatment of historic properties and getting it done within a record 10-month period.

The Pier 29 project is one of 20 projects throughout California that will be receiving the award on September 27, 2013. We are sending Wendy Proctor, our Port architect who project managed the reconstruction and Mark Paez, our Port historic preservation staff to accept the award.

I want to thank all of the folks that were involved in this monumental task led by Wendy Proctor, Tim Leung, Yakov Okupnik, Mabal Bhat, Arnel Prestos, David Hu, Tim Felton, Elaine Forbes, Uday Prasad, Larry Brown, Tim Yoshida, Monico Corral, and Mark Paez, and many others from the Port staff. Mark Hanson from the city's risk management office. Turner Construction. Creegan + D'Angelo, YEI Engineers, Michael Taube Architects, Carey and Company, ARG, our insurer, McLarens Young, and our insurer's Consultant MKA.

It has taken a host of people working on this project nonstop, but we are gratified to have Pier 29 back looking as beautiful as she does and actually being filled with people as she is right now. I'd like to thank this crew of people.

I forgot to mention that the California Preservation Foundation is going to publish a book in honor of their 30th anniversary. The book is being published by Heyday Books and is written by J. K. Dineen with a forward by John King. It is going to feature the projects that have received this award over the past 30 years. One of those projects is this building, the ferry building landmark number 90. We're very pleased by that honor as well.

- 3rd on Third

On Thursday, August 15, 2013 is the third Thursday of the month, which means it is the third celebration of 3rd on Third in the Bayview which is a fairly new event beginning this past June, a monthly event every third Thursday. It runs along Third Street between McKinnon and Quesada avenues. It starts at 5:30 p.m. It has a lot of great events. This month, Stern Grove Festival Association will be brining Grove on the Road, which is a live electronic band Afrolicious and another band called Moon Candy. So if you haven't seen either of them, you're in for a treat. 3rd on Third this coming Thursday 5:30. Hope to see you there.

- In Memoriam – Tom Meredith, Captain of *Butchie B*

I want to close my executive director's report in memory of a gentleman by the name of Tom Meredith. Tom has been the captain of *Butchie B* for some time. He passed away in July. *Butchie B* is a sports fishing vessel berthed in Fisherman's Wharf. Tom has been a captain there for a very long time. He has a nickname of Mushy. Apparently he had a habit of speaking with his mouth full, so they named him Mush Mouth, which got translated into Mushy. So he's known as Mushy. Captain Tom Meredith passed away recently. He was a terrific guy. As many of our captains have, he served in the Armed

Forces and the Marines in the 1940s. He's been running boats his whole life. He is very fond fixture of part of Fisherman's Wharf heritage and will be missed greatly.

Commissioner Adams - First of all, Director Moyer, we appreciate your report and also wanted to tell you it's really good that the relationship between the ILWU and the Port continues to grow. Clearly it has great benefits not only for the community but for the Port. Hopefully with this, the Labor Day celebration, the community will come out. Clearly the Port belongs to every citizen in San Francisco. I'd like to update my other commissioners. On July 19, 2013 Jim Maloney, Peter Dailey and I gave Supervisor Scott Weiner a tour of the harbor. Supervisor Weiner was really impressed. He had never seen the harbor from the waterside looking in. We had about two hours with Supervisor Scott Weiner. Clearly he's a big supporter of the Port. He says that the Port is a hidden jewel and has so much great potential. It's like a hidden gem down here in the city and that he and the other board of supervisors will continue to support it.

On July 21, 2013, I had lunch with three U.S. Senators. U.S. Senator Brian Schatz of Hawaii, U.S. Senator Jeff Merkley of Oregon and Senator Chris Coons of Delaware. They were in San Francisco. I had a private meeting with them. I took Jim Maloney with me to that meeting. They all come from ports. They're very supportive. Our union has a great relationship with these senators and it piggybacks on my other issue, the harbor maintenance press conference that we're having up in Seattle on Thursday, July 15, 2013 with U.S. Senators Patty Murray and Maria Cantwell.

We had 40 United States senators that so far are all in this bill, supported the maritime goods and movement act for the 21st century. It's so important for our West Coast ports and having these relationships with U.S. senators. They're clothed in immense power. They can make a lot of things happen. They're committed to the ports, whether it's the Port of San Francisco, Seattle, Oregon, or L.A.

They know that right now Canada and Mexico has an unfair advantage with the harbor maintenance tax. We need an equal playing field. Clearly as we continue to press forward, the Port of San Francisco, besides the other ports, will benefit from that.

B. In celebration of the Port's 150th Anniversary: Presentation on Commercial Fishing and Fish Processing Business at the Port of San Francisco

Peter Dailey, Maritime Deputy Director - As part of the Port's 150th anniversary, the commission did ask staff to make presentations each month highlighting one of industries or one of the benefits that the Port makes to the region. This month's presentation will highlight the Port's fishing industry, which is also one of our maritime industries which Commissioner Adams has asked us to highlight as well.

I'm thrilled to be talking about the industry, as it has a great history and great importance to San Francisco. People have been making a living fishing and crabbing in San Francisco Bay for years prior to the Port's official founding in 1863. 150 years after our founding, the fishing industry remains one of our most important lines of business.

Millions of visitors come to the wharf each year to see fishing boats, enjoy a crab cocktail, enjoy the Bay, but I believe if you really want to see the DNA of the wharf, you've got to get up at sunrise and go down to Pier 45 or down to the wharf and watch the busy ballet of fishing boats, forklifts, hoists, trucks as the boats are unloaded, fish are sold, processed, and then sent out to make the lunch and dinner menus of restaurants around the region.

Walk into virtually any restaurant in San Francisco that has seafood on the menu and the odds are that it was either caught, received, or processed at the Port of San Francisco. That's just not fancy joints. Red's Java House has great fish and chips on Friday. I know they get it at the wharf.

This flurry of activity at the wharf lasts throughout the morning, but as the afternoon approaches and the visitors, the tourists, arrive, one could be fooled into thinking there's not much happening at the wharf. Nothing could be further from the truth.

Today the Port is a leading fishing industry center in San Francisco Bay and home to close to 20 fish processors and receivers and 165 commercial fishing vessels and 14 sport fishing boats.

According to the department of fish and wildlife, in 2011 11 million pounds of seafood with a value of over \$21 million was landed at the Port of San Francisco. Pier 45 houses the largest concentration of fish processors of any port in California. A 2001 economic impact study shows that the fishing industry creates over 1500 direct jobs, which is great. I always find this fascinating which 50 percent of those jobs are for San Francisco residents. These businesses create over \$176 million of economic impact to the region and generate a million dollars in city taxes. The Port earns about \$2.5 million in revenue before expenses each year.

The other interesting part about it is many of our fish processing tenants have been customers of the Port for generations, for four generations in some instances.

Perhaps the wharf's most famous catch is Dungeness crab, whose season starts around Thanksgiving. Collectively, crab fishermen have caught an average of about \$30 million per year worth of crab in the last ten years in California, maintaining Dungeness crab as one of the most valuable fisheries in California.

Is there going to be a problem? I think it's very similar to each fall and the traditional dance between the crab boat owners and the processors. Are there going to be crabs available for Thanksgiving? There's always this tension but it's no accident that the sign at Fisherman's Wharf has a crab in the middle of it signifying the heart of the wharf.

Salmon too have traditionally been a mainstay of San Francisco fishery. Salmon fishery is impacted directly by climate and the amount of freshwater levels in the river system. Wild salmon, not farmed salmon, is a delicacy that our fleet brings to our restaurants and our dinner tables that we should relish and enjoy.

Beginning as early as October and lasting through April, millions of fertile herring swim underneath the Golden Gate Bridge to spawn. Herring fishing in San Francisco is one of the nation's last urban fisheries. You can be on a high rise building on the 22nd floor of One Market and look out and see these little aluminum landing craft in the wintertime and see their nets and the seagulls flocking. That's happening right at the foot of the Port.

In the days of the Port, our fleet was comprised of lateen-rigged sailboats called feluccas. They were built with the same style of the boats of the local Italian fishermen from their hometown. Chinese and Japanese fishermen also made their living from the abundant fish and crab in the bay.

In the late 1800s San Francisco Bay and the delta constituted the largest fishing center in California. Salmon, shad, striped bass, and sturgeon were in abundance. 19 canneries on the delta annually can 200,000 cases of salmon. Bay oysters were also harvested, luring oyster pirates such as young Jack London who later wrote about the experience.

In 1900, about the turn of the century, Fisherman's Wharf was relocated from the foot of Union Street to its current location. Stalls were built on three buildings along Taylor Street and were numbered one through nine. The fish processing stalls morphed into restaurants stretching north from Jefferson Street, hence the current names of Alioto's Number 8 or Fisherman's Grotto Number 9.

As the decades passed, environmental damage caused by overfishing, development and pollution took a heavy toll on the fishing industry. Commercial fishing was fading away or was banned inside the Bay. To be truthful, Fisherman's Wharf was neglected by the Port and by the city.

After decades of neglect without significant investment, the city was at risk of losing this important industry. A slow revival began in 1974 when then Mayor Joe Alioto formed a citizen's committee over the preservation and beautification of Fisherman's Wharf. Ambitious plans were drawn to turn back the year's neglect and make Fisherman's Wharf again one of the nation's most modern and vibrant seafood centers.

A modern fishing harbor at Hyde Street was proposed to accommodate the newest and largest boats of the fishing fleet. The centerpiece of this plan was developing Pier 45 as a new seafood handling and processing center at the Port.

Decades of neglect started to be reversed. In 1986, a 1200 foot breakwater was first built to protect the fleet, creating a 30 acre commercial harbor, which was the first step. Just as plans started to get traction, just like the fishermen have to deal with Mother Nature, so do the Port.

In 1989, the Loma Prieta earthquake altered the timeline and the cost for renewal at Fisherman's Wharf. Pier 45, which was the planned location for a new seafood center suffered significant earthquake damage and chased away the last of a dwindling number of fish handling companies doing business at the Port.

The earthquake repair cost for Pier 45 skyrocketed and for a moment it seemed that there may no longer be any fish at Fisherman's Wharf. Undaunted, to the Port and city and the community's credit, we began a \$14 million earthquake repair project at the wharf at Pier 45, which, when completed, turned a decrepit, seismically unsafe pier into a modern fish receiving and processing center.

I can recall pundits at the time saying the industry was too far gone and it would never come back to San Francisco even if we fixed Pier 45. Luckily, when the facility opened in 1995, the receiving and processing companies flocked back to Fisherman's Wharf and the sheds were leased to capacity almost immediately.

Today they remain at capacity with over 100,000 square feet of modern fish handling and distribution space leased to about 20 fish processors and receivers. It is today Northern California's leading seafood center.

The next infrastructure project was the construction of the \$7 million Hyde Street Harbor. Commissioner Brandon, you were on the commission when that was approved and ratified. It provides berthing for the larger, more modern fishing vessels that opened in 2001 and has 62 berths with modern amenities for the larger transient boats that chase the seasonal catches up and down the West Coast.

The progress continues. Just this last year, a \$2 million harbor office and joint operation center was completed at the foot of Hyde Street Harbor. A 50-year-old aluminum building was transformed that provides amenities for local and visiting commercial fishermen. It also houses the Port's new harbor office as well as home to the San Francisco marine unit and their dive team, the San Francisco Fire Department fast response crews.

This past year, continuation of this commission's direction, the Port maintenance teams lead by Tom Carter spent close to a million dollars and in record time

rebuilt Wharf J4 and the inner lagoon to make sure that our home fleet had a place to safely tie their boats up.

Commercial fishing and processing predates the Port. It's a vital maritime industry that requires continual nurturing and attention. Wild salmon, crab, sand dabs, and other seafood delicacies do not magically appear in grocery stores and on restaurant menus. Fishermen and their families sail the Pacific searching for their catch while receivers and processors market and distribute to the region.

In closing, hidden in plain sight just a few steps from Pier 45 is the fishermen's memorial chapel. It's a touching tribute to the generations of San Franciscans who have dedicated their lives to the sea. Overlooking the wharf, the chapel stands as memorial to the fishermen and women who have braved cold waves, blinding fog, and howling winds. It includes a memorial listing the names of the many fishermen who have lost their lives in this very dangerous profession.

The Port greatly values the fishing industry and understands our role to nurture and protect this vital way of making a living. The Port is proud to maintain this historical service on behalf of the city and our region.

Larry Collins – It's a pretty tough act to follow there. Peter did an excellent job with that history. Congratulations on the Port's 150th anniversary. I've commercially fished out of the wharf for 30 years. I'm the president of the Crab Boat Owners Association. I'm also the president of the newly formed San Francisco Community Fishing Association. The fact that there's still a working fleet out of San Francisco is nothing short of a miracle and due in large part to the support of the Port of San Francisco. We're lucky here in the city to be next to some of the richest fishing grounds in the world. Our local waters teem with salmon, crab, halibut, rockfish, albacore, and herring. These fisheries are all very carefully managed and for the most part in great shape. Access to this bounty makes it possible for our small, family-owned portfolio boats to make a good living. These top of the line products combine with robust local markets makes it a win-win for the local consumers. Tourists come from around the world to eat at our famous seafood restaurants and see the boats. The fishermen and women add genuine color and tradition. This salmon season's been one of the best in the last decade, bringing transient boats to fill the slips, buy ice and fuel, dine in our bars and restaurants, and unload their salmon. All this commerce generates millions of dollars for the local economy. It also helps to make Fisherman's Wharf a world class destination. The fleet thanks you for all your support. I'm sure my great, great, many more greats grandson will be here to congratulate you on your 300th anniversary. If you have any questions about the fleet or how it's going down there at the wharf, we started our -- which is the first on the West Coast -- the Community Fishing Association two and a half years ago with help from the Port with a grant from the Ocean Protection Council and some help from EcoTrust. We started with seven boats. We give our fishermen access to the hoist and access to markets. I've been running this for these guys, buying and selling all their fish. At end of the year we return through profit

sharing all the profits of the business. The local fishermen love it. Now we have 19 boats and still more people are asking to join. We're able to put some of the most beautiful product on the market. We've been able to work with all the other processors. They were a little nervous at first when the fishermen would have a hoist, but we've been also in charge of running and maintaining the ice dock down there. We've put quite a bit of money in the last two and a half years into maintaining that ice dock. If I have to buy another \$800 motor, it's going to drive me crazy, but the ice is the best it's been looking and the fishing business is the best I've seen it in a long, long time.

Commissioner Brandon - Thank you so much, Peter. That was a great presentation. We appreciate it.

- C. Request approval of Memorandum of Understanding among the City's Office of Economic and Workforce Development, the Port and the America's Cup Organizing Committee regarding the Pilot Donor Recognition Program in association with OneSF: Celebrate the Cup at Piers 27-29. (Resolution No. 13-31)

Kyri McClellan, Executive Director of the San Francisco America's Cup Organizing Committee - I'm building on the presentation that happened in April when we came before you with the first concept of the pilot donor program, which is one of the tranches of our work in raising funds and awareness to support the city and county of San Francisco and its departments in hosting the 34th America's Cup.

We've created the strategic campaign called OneSF: Celebrate the Cup. Both very principally about raising funds, but also through building awareness of the community and legacy benefits, not only of the America's Cup, but it's a nice dovetail with the 150th anniversary of the Port as well and all that the city and Port have leveraged through the planning and preparation for the event.

From that initial feedback that we received on April 9, 2013 we're coming back before you today to present a Memorandum of Understanding, as well as the underpinnings of the goals of the program. At that last presentation, you asked about site specific considerations, specific assets that we were considering, how the funding would work, both in terms of the funds that were raised and what expenditures they would be spent on, as well as the proposed schedule should this be approved.

As you're well aware, there are other departments here in San Francisco as well as cultural institutions that have donor recognition programs whereby individuals, family foundations, local companies that want to support that institution have the opportunity in turn to be recognized for that contribution.

We've looked at the partnership between the San Francisco Parks Alliance, which supports the Rec and Park Department. They have a bench program and support a number of local parks and local organizations that want to rebuild their

park or invest in their community center. They've provided the framework in the past for that department.

We also looked at members of my development team and some of our consultants have worked not only for SFMOMA and the Cal Academy of Sciences, but other institutions and members of my committee, which is 75 members strong. We have folks that have been involved in a number of these campaigns at these institutions and over the last few months we've been meeting with them, seeking their guidance and input on what would be an appropriate program to test for the Port of San Francisco if this is something that could be an ongoing revenue source for the Port.

Very specifically, the goal of the program, first and foremost, is to raise revenue. We also want to create an opportunity, provide funding for additional public amenities in the Northeast Wharf Plaza that are not otherwise funded by the general obligation bond. Provide a real world test of the marketplace to see if this is a program that should the Port decide to continue with it after it's launched, are there other locations around the waterfront, maybe in Fisherman's Wharf as we were just hearing about from the commercial fleet. The new benches at Pier 45.

There are a whole host of new parks and programs that are coming online along the waterfront or existing ones that you may want to consider adding this amenities to.

We are also creating this program, looking at a variety of donation levels so that we can have folks participate within the spectrum of other programs around the city, and I'll get into in a little greater detail when I talk about the specific assets, but we're trying to raise as much money as possible in this initial phase but also create a broad spectrum of participation.

The site specific considerations, looking at what the Port has been able to capitalize and using the America's Cup as a catalyst, both for planning and preparations and the environmental review process with the delivery of the James R. Herman Cruise Ship Terminal, Prop B provided the funding for the Northeast Wharf Plaza.

We have the opportunity now to add a couple additional elements. One could be up to 1000 bricks. We're looking at four by eights and eight by eights. If you've been down to AT&T Park recently, they have a number of bricks that have been installed in the same dimensions for both of the recent championships.

This is a rendering provided by KMD, which is part of the original partnership that designed the cruise ship terminal and plaza. When we're talking about the bricks, in consultation with the Port staff, a place that we thought would be an appropriate place for the bricks is right along the rise of the walkway, integrating up to 1000 bricks into the edge of the walkway and the lawn. It would be

integrated into that space. That was one of the sites that the staff had recommended.

We're also looking at up to 72 benches. You can see a couple of those benches just here in this presentation that are already built in, but they're really throughout the Northeast Wharf Plaza. I have an image of a bench. This is also a rendering by KMD showing a plaque that could be placed on one of the benches that's already been originally conceived as being incorporated into the park.

As I've noted, none of what we're proposing today as a pilot program includes what may have been previously alluded to as naming rights for this particular park, the piers, or the buildings. The James R. Herman Passenger Cruise Ship Terminal already has a very appropriate name. The Port staff will go through a process of naming the Northeast Wharf Plaza park in its own time and will come back to you with a recommendation on that. That also is not one of the assets that's currently being considered. I want to be really explicit in that in case there have been any concern about that.

Elements within the Northeast Wharf Plaza specifically we're talking about the lawn space, the walkway adjacent to the lawn, the open plaza area, and the point at the end of the pier. The lawn is fairly obvious in this picture. It's got the trees around it. The walkway is the area that cuts between the edge of the Embarcadero and the lawn itself. The plaza is the area we're referring to where the trees are and the planters.

The elements within the James R. Herman Passenger Cruise Ship Terminal were, after considerable consultation, the two that we think are most likely to be valued assets are the second floor event space as well as the exterior concourse on the second floor, which looks at the beautiful Bay lights. We anticipate the second floor space and the concourse will be used extensively for events. They play a critical role certainly in serving passenger cruise ships, but also for the event space.

We're looking at a donor recognition wall at the western edge of the second floor event space within the terminal that would acknowledge investment in San Francisco's waterfront with a list of donors' names as well.

Mike Martin from the office of economic and workforce development will speak about funding and how funds that are raised from this program would support the specific expenses for capital and operating relative to the Port's expenses.

Mike Martin, America's Cup Project Manager in the Office of Economic and Workforce Development - We've been working with Port staff and ACOC staff and the attorneys to craft a proposal that we think sort of achieves two objectives. First is to obviously bring benefits to the Port as part of its donor recognition, but at the same time to support the ACOC in its mission to support the America's Cup event. We see these as very much mutually supporting.

What we were trying to do was find things that were in that sweet spot, both in terms of useful for the event, but also having sort of a benefit to the harbor fund going forward.

From the top of this list, you'll see the Pier 29 substructure and wall improvements, some of which have been completed, some of which are going to be in the future. But all of which hopefully we'll be able to use funds to benefit the harbor fund to allow that to happen without using as many resources from the Port's own funds.

The next two items are operational costs of the event on Port property, wastewater facilities, the port-a-potties and holding tanks along the waterfront, as well as utility costs at the venues.

The consulting fees and title reports, this was a cost that was incurred as we were developing the project during the early phases of environmental review. Port tenant relocation costs. There have been a couple of businesses relocated from the Port venues, so these costs have been incurred by the tenants as part of their agreement to move to a new space.

Piers 30-32 upgrades, these were upgrades to make Piers 30-32 safe for the team based facilities that are there now and also they have the ability to have a public access area on Piers 30-32 where people can come to see the activities of the teams up close.

The Pier 19 south apron improvements, this is another apron that is open for public access and is another legacy benefit of the America's Cup event. That is yet another place on the Port's waterfront for the public to come to and enjoy the water.

That's how we construct the list. We think it's a good list that presents a lot of opportunities for benefits for both the Port and the event.

Kyri McClellan - We will be working with the Port as well as staff and take your direction on this as well. We wanted to reach out to a number of waterfront stakeholders, using this site along the central waterfront, engaging with neighborhood groups, engaging with the maritime industry business owners, as well as folks that are coming to the America's Cup to participate and visiting Piers 27-29 for the first time and seeing what an amazing gem it is for San Francisco. We have the ability to access folks who have purchased spectator tickets and will promote this program to them.

We are looking to community newspapers and newsletters. We have a website, onescelebratethecup.com. That would also be a way to promote this opportunity to invest in the Port and a number of promotional events.

We have been in the market over two years now raising funds to support our efforts and have had conversations going with a number of major donors that

have allowed us to raise the funds to date. With this addition of this program, we would go back to a number of those and ask them if they'd like to participate in this program as well.

I've learned over the last couple of years in this role and leveraging our development team's expertise that the typical lifecycle of an investment by a donor in a program like this depends on both the value of the asset and then their particular interest in it. When we look at what we'd be offering this program, the bricks we think we would offer at about \$150 to \$300. Choosing that amount based on what else is available in the market and what we think both resonates with the Port's 150th anniversary and what could go quickly in an effort to sell up to 1000.

The benches we think we'd value at about \$25,000. That is comparable with what Rec & Park offers for their most valued assets at the Palace of Fine Arts, Union Square, and Harding Park. They offer benches at 10K and 5K in other locations, but we've picked the highest level there.

The terminal assets we think are somewhere between half a million to a million dollars apiece, which is the second floor event space and the concourse. The Northeast Waterfront Plaza assets we think would range between a million dollars to \$2.5 million and the point itself roughly \$1.5 to \$2.5 million. This is our best guess. The marketplace will ultimately decide, but this is our assessment of what we think is the appropriate value.

I know that the lifecycle from cultivation to commitment varies on the asset. Bricks people could buy through the website. It could be very quickly, even weeks or days. Whereas the larger donations could take six, nine months or even longer.

I would welcome the opportunity to take your questions and comments and appreciate the opportunity to bring this forward. It's been our pleasure to try and leverage this event as a legacy benefit for the Port should you want to move forward with the pilot program.

Kyri McClellan - One other thing I just wanted to walk through, which was we were here before in April getting your direction and input. We built out the pilot program guidelines and looked at what the assets would be. We're here for your formal approval.

We'd like to take the next four months to market and implement the program and come back in January 2014 to give you a report on our progress and then be able to incorporate a number of these elements that we hopefully with success will have sold and can be incorporated into the 2014 build out of both phase two of the terminal as well as the Northeast Wharf Plaza.

Alex Walker, San Francisco Beautiful - I was here last month because we had seen the news of the donor recognition program. We were a bit worried about

naming rights because at San Francisco Beautiful, we have had a policy of making sure we have a sense of civic pride in our places and making sure that we're not doing naming rights for corporations and plastering those on places. With this program coming today to say that for the most part, we're happy to see that it's explicitly said here that there is not naming rights for Port parks, piers, or buildings. Even though I haven't seen the specific mention in here, I haven't seen where corporate is mentioned. I'm assuming it's going to be individual and foundational gifts. I haven't seen that exactly with the MOU that I've looked through but it's been exactly stated here.

We wanted to make sure that this is a thing that's going to be a place making and not a place taking. But for the most part, bricks, benches, that's not the issue. The one that has been standing out to us is the elements with the parks, the open plaza area and the point. Saying we're going to put a name. How is that going to look on a park? How is it going to look on the point? What are we going to have to signify that and is that going to be something that's opened up to more a commercial naming right in a way or if that's going to be an individual or a foundation that have the ability to have their name on their side of the cruise terminal concourse or the lawn, the point, the side of the pier, etc. That's the questions that we're looking at here and we hope that there is going to be more of an explanation of what this is really going to be looking like because the diagrams we've seen so far don't show what it's actually going to look like. It's zoomed out. It's not the renderings of the Photoshop. We'd like to see what it's actually going to look like when this is actually prepared.

For the most part, we want to be a part of the conversation. We're worried. We're not as worried as we were, but we just want to make sure that when it comes to this program where we're naming such large areas, when we go out of the bricks and the benches, we're going up to large area. What is it going to be looking like? Is this going to be something that's going to be in your face and it's going to be this kind of place taking that we are a little bit worried about?

We're hoping that we can have a little bit more about what that might end up looking like. We're very happy to continue with the dialogue because we want to make sure that these programs have the funding that they need, but that it's done in a way that is not going to be wholesale taking of these facilities.

Milo Hanke, past president of San Francisco Beautiful - I'd like to echo Alex's comments. We're not here to formally give a yes or a no on the donor recognition program involving the bricks and the tiles, but there is concern of a creeping naming rights program if large areas are named for corporations. I'd like to expand on an observation that Commissioner Adams made earlier, which is this Port belongs to all of the citizens. It was the anonymous tax payer, the anonymous citizen, who funded the construction and the maintenance of our ports. The problem with corporate naming rights is that large commercial interests jump in front of the anonymous ordinary citizen and collectively we begin to lose our sense of place. There is another issue I believe, a political reality, with the draw to go towards the naming rights scheme. Government,

particularly now, has never had more money than it needed. Our governments and the Port are strained too. It's very difficult to turn away any additional revenue, however small. Every little bit helps. Or does it? If it involves corporate naming rights, that comes with an intangible cost. Given San Franciscans' historic aversion to excess commercialization of our public realm, corporate naming rights is well worth taking a bypass on.

In contrast, the tiles and the bricks that are being offered at \$150 or \$300 per brick, that's a gratifying opportunity for ordinary citizens who have already invested in our Port to volunteer, to express additional support for this proud Port. The Port celebrated its 150th year anniversary. We've only been here since 1947. San Francisco Beautiful 40 years ago, helped lead the way in preserving lower height limits on our Bay. We're glad to see this program come along. I personally will be proposing to San Francisco Beautiful that we buy some of these bricks.

The first brick will be in honor of Frieda Klusmann, the founder of our organization. In 1947, she kept the city from ripping out its cable car system. In the last, 30 years, we've been one of the organizations taking a lead in fighting the excess of commercialization. It was Oscar Wilde who said, "It's a cynic who knows the price of everything and the value of nothing." We know that the Port Commission has worked and endeavored so hard to maintain this jewel of San Francisco, a jewel among the world class cities..

Commissioner Katz - I want to thank the staff and appreciate the effort that's gone into this. You've probably have heard us all say over and over again we're always doing great things and trying to figure out how to pay for them often, sometimes after the fact.

In all seriousness, in this situation I think one thing that has echoed and I'm sure my colleagues all agree that this is not something that we want to undermine any of the incredible hard work that's gone into creating a spectacular new facility and our new cruise ship terminal.

Certainly my sense has been that was never intended. It's not actually naming rights nor is it a place taking. We concur with those concerns, but I don't think that that is something that we or anyone has contemplated. This is an opportunity to acknowledge the work that people have done to make so much happen in our city, to thank people that have made things happen, and to acknowledge what allows us to move forward with creative and beautiful projects along the waterfront.

We'll definitely oversee and be mindful of the aesthetics of anything going forward. We'll take into account how it's laid out. That's something we'll all be mindful of, but I appreciate the opportunity to acknowledge individuals and others that have moved so much forward and the thought that's gone into this.

I think it's been addressed the concerns that were perhaps misconceptions that have been out there and misinformation. Today's presentation certainly should

allay that. My sense and I imagine of my colleagues as well that this is not a selling off of the Port, but an opportunity to thank and acknowledge those that have allowed us to move forward.

Commissioner Adams - First of all, thank you Kyri and Michael. At the last meeting, Commissioner Murphy and I had commented and had concerns about the lay out of this deal with America's Cup and this program. We didn't want it to seem like it's for the elite club. You came back and addressed that issue. I'm just a working class guy. When you said that somebody can buy a brick, it doesn't matter whether you live at Hunter's Point, Castro, or wherever you live, you should be able to participate and be a part of that. I am glad to hear that because I can tell you, I don't have a million dollars as I'm just a working class guy. I'm proud of it. I make no apologies.

What Commissioner Katz said is true. I know we continue to work on it, but I also understand people who are saying that if you only give a couple hundred dollars or a thousand, if somebody gives million, they get these naming rights. I think as the Port and people like Director Moyer and Deputy Director Peter Dailey, this was years coming. This cruise terminal, I never even thought it was going to come to fruition, but it is because of their vision and determination and working hard and never taking answer no for an answer. When they did hear no, they just meant not right now. I like this. I want to know a little bit more about it. But clearly you can count me for one of those \$150 bricks.

Commissioner Murphy - Thank you for your presentation. I know you both worked hard on it. Actually I think you called me yesterday. I didn't hear you say anything in your presentation about selling out to big commercial companies or whatever. I only heard you talk about is bricks and benches, which I think is going to be very nice down there.

Commissioner Brandon – I, too, would like to thank you. This was a great presentation and much more defined and detailed than the first presentation. Thank you so much for that. I do hope that this program is a success as a pilot program and that we are able to continue it because it would be great to find new revenue sources for the Port. Thank you for bringing this opportunity to us. We appreciate it.

ACTION: Commissioner Murphy moved approval; Commissioner Adams seconded the motion. All of the Commissioners were in favor. Resolution No. 13-31 was adopted.

10. CONSENT

- A. Request approval for a San Francisco Port Commissioner to travel with Port Maritime Staff to New Orleans, Louisiana to attend the Breakbulk Americas Conference on September 23-26, 2013. (Resolution No. 13-28)

ACTION: Commissioner Katz moved approval; Commissioner Murphy seconded the motion. All of the Commissioners were in favor. Resolution No. 13-28 was adopted.

- B. Request authorization to award Construction Contract No. 2761, Blue Greenway Signage Project, to Cal State Constructors, Inc., in the amount of \$681,547, and authorization for a contract contingency fund of 10% of the contract amount (or \$68,155) for unanticipated contingencies for a total authorization of \$749,702. (Resolution No. 13-29)

Commissioner Brandon made a motion to remove Item 10B out of consent calendar so she can ask a question. Commissioner Katz seconded the motion.

Commissioner Brandon - I don't need a presentation on this item. I just have a question. It looks like this bid has come in very low. I want to make sure that you're comfortable with the fact that this company can complete the project with the bid price since it's under our estimate, way under the other three bids. I just want to make sure that you're comfortable with it.

David Beaupre, Planning and Development - Ken Chu, the engineering project manager is out on jury duty. I'm covering for him. Fortunately, when the bids did come in, Port staff and the consultant team did have a concern about not the contractor but one of the sub-contractors about their ability to deliver the sail or blaze project. We met with the contractor and their sub-contractor twice with the consultant team to make certain that they could deliver the quality material and product that we expected. At the end of those two meetings, after several conversations with the entire team, both Port staff and the consultant team felt confident that the contractor could deliver on the contract as proposed.

Commissioner Brandon - It's wonderful that this project is going to come in so under budget. What are we going to do with all that money?

David Beaupre - As you may recall, the budget was for both signage way finding and site furnishings. This initial contract is going to pay for the signage and way finding elements. We'll use the remainder of the budget for the site furnishings at the various nodes adjacent to the signage.

Commissioner Brandon - We're going to have a beautiful Blue Greenway.

David Beaupre - Yes.

Commissioner Murphy - I had the same concerns as Commissioner Brandon. Why pick the lowest contractor here? Have we worked with this guy before?

Tim Leung, Administrative Engineer, Engineering Division - I was the one who opened the bids. I did the bid summary which summarizes all the bids. I did contact the lowest bidder and asked them how sure they are about this bid and

they affirmed that they would want to continue with this. That's the price that they will honor. They're willing to obligate the bid price that they put down.

Commissioner Murphy - We've had some problems with people not being able to perform the work that they've signed for and we end up in lawsuits. I'm a little worried about it personally. I don't know what the solution is here.

Monique Moyer - We have a couple options. The city's bidding practices are that we accept the low bid unless there's a reason to reject the low bid but we could reject the bids and rebid it. Certainly we can't increase the contract without coming back to the Port Commission.

Commissioner Murphy - The other two bids are pretty even then you've got this bid that's \$200,000 less, which is huge.

David Beaupre - We did have that concern about the quality of the work for one of the elements within the sign package itself. As a Port staff team working with our consultant team who are signage designers and do this day in and day out, we considered rejecting it and putting it back out to bid. Some of the concerns were that, one, we may only get one bid and that bid may be higher than the budget that we have anticipated today or we try to work with the contractor. Tim participated in both meetings and so did the consultants. We felt that after meeting with the contractor that was selected that they had the capabilities to deliver the package that we needed and that was both for the two sub-contractors, Phoenix Electric and Corporate Sign Systems. The design consultant is Kate Keating and Associates who has done work at the Presidio and Candlestick Park. They have worked with Corporate Sign Systems and felt confident that if Corporate Sign Systems felt that they could deliver their project and they stand by their word and could deliver the project.

Commissioner Murphy - They're abiding by local hire and all of that stuff?

David Beaupre - Yes.

Tim Leung - I believe Cal State Constructors are a new local business firm. I'm not sure if they're certified LBE firm with CMD, but they're the lowest and most responsive bidder. They met the contractor qualifications level as advertised as well.

Commissioner Katz - If they're a newer company, do we have any sense of their history on other projects or how they were formed or where their principals came from?

Tim Leung - Engineering did do a background check on their references and found that they were qualified.

Commissioner Murphy - Have they done any similar type of work in the city or in any local cities?

Tim Leung - This type of work, most of it is being subbed out to another LBE firm. Phoenix Electric is doing the foundation work so we feel comfortable with that.

Commissioner Katz - My sense is that everything looks to be in place. If we move it forward, I ask that our legal team take one last pass through just to make sure that, given that there was such a discrepancy, that we're protected for any surprises that might come up as much as we can anticipate them. I think we should move forward and maybe we got lucky that we saved some money for a change.

Commissioner Murphy – Yes, I think we should go over it item by item. Make sure everything is covered in this contract. I'm sure you've done that.

Tim Leung - Yes, we did, commissioner. We did review the items with the contractor. The first thing that we said was that there was a significant difference between your bid and the next cluster of bids. As I said, they affirmed their bid.

Commissioner Brandon - So that means you will not be coming back with any amendments, right?

David Beaupre - I cannot make that guarantee, commissioner.

Commissioner Katz - I recommend that we approve this, but I'm asking our counsel to take one further peak at it and see if anything jumps out, then to perhaps bring it back. Otherwise, if everything looks fine, I think we should go forward with it.

General Counsel Eileen Malley – We'd be happy to take a look at it.

ACTION: Commissioner Katz moved approval; Commissioner Adams seconded the motion. All of the Commissioners were in favor. Resolution No. 13-29 was adopted.

11. FINANCE & ADMINISTRATION

- A. Request authorization to enter into a one year contract with the San Francisco Conservation Corps (SFCC) in the amount of \$285,000 to provide and administer the Port's Youth Employment Program. (Resolution No. 13-30)

Elaine Forbes, Deputy Director of Finance and Administration - I'm here today with Andres Acevedo and Megan Stephenson who worked on this contract. I'm also here with Tom Carter, the deputy director of the maintenance division. Ann Cochrane, the executive director of the San Francisco Conservation Corps and Troy Henry, who also works for the Conservation Corps, and representatives from the sub-contractor team, Jamie Fountain from Larkin Street Youth and James Bryant from the A. Philip Randolph Institute of San Francisco.

The item before you would authorize the Port to enter into a one year contract with the San Francisco Conservation Corps to provide paid work experience to at-risk youth to help maintain the Port's property, our park areas, and our public right-of-ways. The contract would be for \$285,000.

By way of background, since 2005, following a competitive procurement process, the Port has contracted with the San Francisco Conservation Corps, which is a community based nonprofit organization, to provide such paid employment opportunities for at-risk youth. This contract is part of the Port's youth employment program.

As you know, the Port sponsors a number of workforce development efforts targeted at youth and young adults, including this proposed contract, the maritime internship program, AmeriCorps interns at Heron's Head Park, our YouthWorks, Project Pull internships, and various college internship opportunities.

Regarding the selection process and you heard of the selection process last time we were here, so I'll make it brief. There's quite a bit of detail in the report but the last contract with Conservation Corps expired on June 30, 2012. On July 5th, the Port Commission authorized staff to advertise the RFP, which was issued on December 20, 2012. On January 29, 2013, the due date, the Port received one proposal from San Francisco Conservation Corps with Larkin Street Youth Services as a sub-contractor.

The Port convened an evaluation panel and after scoring and reviewing the proposal, the evaluation panel recommended a contract with the San Francisco Conservation Corps without reservation.

On March 26, 2013 we came to the Port Commission asking permission to enter into this contract. You provided us direction on the proposed term of the agreement, asked us to continue to negotiate and come back to you with some changes. Specifically, you wanted to see the percentage of the budget supporting youth participants to go up. You wanted us to develop performance and metrics that we would use to evaluate the contract. To report back on geographic representation of the youth served. You had concerns about the contract term. We were proposing a four year term on March 26, 2013.

Regarding geographic representation first, the San Francisco Conservation Corps did provide a breakdown of their participants for 2012 and it's in the report. You'll see that more than half, or 57 percent of participants in that calendar year, were from Bayview, Hunter's Point, and Visitacion Valley neighborhoods. About 82 percent of representatives are coming from the southeast neighborhoods of San Francisco and there is a wide variety of neighborhoods served. Larkin does not have this data because their youth are homeless, but they provided statistics on the youth they serve.

We spoke with the Conservation Corps about outreach and how they reach at-risk youth across the city. They let us know that they have a network of sources and referrals. The best resource is the youth they're serving now and graduates.

Also to address geographic representation, the San Francisco Conservation Corps is recommending adding an additional sub-consultant partner, a Bayview Hunter's Point base provider, the A. Philip Randolph Institute of San Francisco. The Conservation Corps states that this qualified local nonprofit will provide services very similar to Larkin Street and that the geographic location of this nonprofit may result in reaching more at-risk youth from that community. We've reviewed information about this nonprofit and concur that adding an additional partner is a fine and good thing to do.

Regarding the budget, when we came with you with the original budget proposal of \$265,000, \$96,000 or 36 percent was allocated to youth salary. The revised contract allocates \$116,000 or 41 percent to youth salaries. So this is an increase. It also bumps up service hours from 6800 to 7400, with the base Larkin and Conservation Corps and adds an additional 730 hours with the Randolph. So that equals 8130 paid hours.

The budget also reduces the indirect costs, which the commission was concerned about, from 15 to 11 percent. Port staff did some due diligence regarding this indirect cost rate, looking at controller's guidance, other city contracts for similar services and found that 11 percent is reasonable and also that this contract will dedicate a higher proportion of the budget to youth salaries and supervisor salaries and a lower percentage to administrative and direct costs than other city contracts. We feel comfortable recommending this.

Regarding the contract term, we had first proposed a four year term. We're instead recommending a limited one year contract with a term starting August 2013, as soon as we can get the contract executed, to 2014.

We're proposing to start a new RFP concurrently for youth employment. Around about October we'll be asking for permission to advertise so that we can have a new contract up and running when this one year term expires. We're recommending this one year term so that we really can get the program going and getting these opportunities to youth and have continuity of services.

At the same time, we realize that doing a new RFP, we can broaden our outreach efforts and ensure that new providers who have entered the market have an opportunity to respond. We intend to do a very wide outreach.

James Bryant - I do want to correct a small little piece. Jacqueline Flynn is our director. I take no credit for the great work she's doing because she's doing a fine job. I did come to you all a few months ago with some concerns. Obviously we are now all in the village, so to speak, talking about how we can make things better. Talking about how we can get outreach services to the people who need to have job opportunities the most in this 16 to 24 age group.

Ms. Flynn can tell you a little more about the Philip Randolph Institute. I think some of you are aware of our longtime existence in the community. We would like to thank our partners, Conservation Corps, and Larkin Services for joining with us. We'd like to thank the commission for having the wherewithal to consider us to help out with a program that I'd seen started by Sophie Maxwell. I would love to see it flourish.

Jacqueline Flynn - First I wanted to thank you all for allowing us the chance to be here today. Historically, APRI has been serving very low income minority communities and engaging residents in public participation and voting activities.

Since our inception, our capacity has grown to include workforce and youth services. Every year, APRI offers summer internship opportunities and year round volunteer based youth chapter. Our services support the mental growth of young adults from low income communities.

Citywide we do target all youth, but there has been specific targeting of the Bayview where we have the highest poverty concentrations and our youth are plagued with negative social influences. This year, our kids described their own neighborhoods as dangerous, negative and places where you have to watch your back. It's easier for them to live a life of the streets than to work hard and influence their community to change.

Our program inspires youth to further their education, set career goals, discover pathways to those goals, and links youth to resources that enrich their learning experiences. We're honored today to be invited by the Port and the Conservation Corps as well as Larkin Street Services to explore a partnership and offer youth programming that includes youth from the communities we serve. We are committed to investing in our youth and their futures.

Ann Cochrane, Executive Director of the San Francisco Conservation Corps - I'm thrilled that you asked the questions that you did because in fact I think this is a stronger proposal at this point for a couple of reasons. One, we've been able to increase the number of hours that the young people will actually benefit from in doing this contract. Secondly, the Corps has always served very low income, at-risk young people for the same reason that Ms. Flynn referred to.

We have the same mission, but we also are stronger when we have partners. We're thrilled that Larkin was part of the original proposal. Just like the Corps being kind of the best kept secret in town, Randolph shares that distinction. One of the things that we agreed is that after this is over, we will continue to figure out ways to partner and work with each other.

We very much appreciate the Port's support over the last period of time. It's been a wonderful learning opportunity for our young people. In fact, we've had so many young people go on to work in the labor unions, to work at Recology, to work at the department of the environment. You can be assured that the work

the young people are doing for the Port is providing them with skills and they are going on to making living wage jobs. We're thrilled and appreciative to have this opportunity.

Commissioner Murphy - I'm very happy with this wonderful program. Thank you for your presentation. I like the way it's going to be staffed and supervised. It's very important. Also that we're not spending all the money on administration and soft costs. The money is actually going to the kids. Like private sector or anything else, these kids need to be supervised and need to be someone with them at all times and need to be given direction. When you do implement this program, I'd like to come out and visit and see how you guys do it. I think it's great.

Commissioner Adams - I share Commissioner Murphy's comments. This is a really good starting point. I want to commend Elaine Forbes and Director Moyer. This is the premier port in the world. This is a world class port. How dare we not have something like this for our community? We should give as much as we have. This is a great starting point for doing this and for those young people.

We never know where those young people one day will end up. Sometimes, all people need is a helping hand, some positive role models, and just a chance. I'm clearly in support of this and I know my other commissioners are too because we all started somewhere ourselves and someone along the way gave us an opportunity. You clearly have my support. I'll be along with Commissioner Murphy to come down to see what you're doing.

I can see the change, James, from the last time you came. I had never seen you. I wondered why you only come this time. I hope you keep coming back down here to the Port because you need to know one thing about the Port of San Francisco. We are a community partner of yours. We're a friend. Show up at these meetings.

Sometimes people always want to be like Monday morning quarterbacks. They come down here, hit the mike and say something. I always say there's an issue out there, you've got a better solution, bring it forth. People always listen to reason.

Commissioner Katz - I echo my colleagues' comments. I was thrilled to see the A. Philip Randolph Institute as part of this new program. I've worked with all three organizations in a variety of different capacities, so I'm especially pleased to see all three working together to help the youth of our city. This is the way things really are supposed to work where we take a look at some opportunities and see where they're going and figure out ways to improve upon them.

I want to thank Elaine and her staff and all three organizations for coming up with what I think are even better solutions for bringing opportunities to our youth. Thanks to other Port staff and also my colleague, Commissioner Brandon, who really asked some of the tough questions last time around. We've all benefited

from it and particularly our youth have benefited from it. I want to thank all of you and I'm very pleased. I would also like to come down. This is something I think is very important.

I want to let our youth know too that this is something that we do care about. It may not be one of our largest contracts, but it's one that is important to all of us and we know of the significant impact it has on our city by bringing everyone into the fabric of our communities here.

Commissioner Brandon- Thank you also. We'll all be down.

Commissioner Brandon - Elaine, thank you so much for going back and negotiating a better contract. I really appreciate your taking the time and making this work. I just wanted to ask. The numbers have changed a lot. I was just wondering why Larkin Street's piece went down. I know that this program is for up to ten kids to be employed throughout the year. I'm trying to figure out how the partnership is going to work. Who's responsible for what and how the funding is attached to that.

Elaine Forbes - I'm going to start the response, but then turn over to Ann to provide more details about the partnership. You're right. When we came for the first review, Larkin Street had a larger share of the budget. They were reduced, but are higher than in the prior contract. In order to provide more staff hours, the Conservation Corps needed to cut back a bit on Larkin's hours and direct those dollars to more youth hours from the San Francisco Conservation Corps is the best way I can describe it but it is a larger share than in the last contract for Larkin Street. I understand that Larkin Street is happy with the budget as proposed. We did achieve the goal of getting more hours to the youth. Ann can provide more detail to how the allocation will work.

Ann Cochrane - Actually Elaine explained it perfectly, which is that in order to serve more of the Conservation Corps members, we had to negotiate a difference in the contract with Larkin. As Elaine said, it is greater than their share over the last four years.

The Conservation Corps is the lead agency. We have our own crews of 18 to 24 year olds. They will be doing projects as assigned by the Port. Larkin is a separate sub-contractor. They will have also their own crews. They have a separate job training program. They also serve a younger cohort of 16 to 17 year olds, which is something else I know that is important to the Port. Because anyone under 18 cannot use power tools based on workers comp and California law, they will be doing different projects, but they will be assigned those projects also by the Port. We will not have influence on what it is that they're doing.

This is the same with APRI. They will be getting projects directly from the Port and be working within the parameters of their program so that it fits with all the other services that they provide. We are the fiscal agent and we would make sure that we're all in compliance with the city's minimum wage ordinance and

that kind of thing, but really the direct relationship between the projects and the young people is individual to each of the agencies.

Commissioner Brandon – So each agency will have a certain amount of hours versus youth employed?

Ann Cochran - Well, they go together, actually. What we committed to with the revision was between Larkin Street and ourselves is 36 young people. If I recall correctly, Randolph will have five young people. The Port will determine what the projects are that need to be done. We go out and say, here's a scope of work and here's how many young people we have. Here's how long it will take. It gets adjusted according to how long the project takes. We've gotten pretty good at estimating, but sometimes it's less. Sometimes it's a little more.

Commissioner Brandon - That sounds better than up to ten youth being employed. More like 40 sounds a lot better given the amount of the contract, so thank you very much.

I want to thank all of you so much for putting this partnership together, for increasing the amount that's actually going to youth. Hopefully with our next RFP we can get even more money to the youth. Thank you, everyone.

ACTION: Commissioner Katz moved approval; Commissioner Adams seconded the motion. All of the Commissioners were in favor. Resolution No. 13-30 was adopted.

12. REAL ESTATE

A. Informational presentation on the Port of San Francisco's Leasing Practices.

Susan Reynolds, Deputy Director for Real Estate - I'm here mostly at your request. Over time you have asked what the process is to get a lease. I understand that the staff report is very textbook-esque, so hopefully my presentation will give you a 40,000 foot view of the leasing process.

To compare the Port metaphorically to a business, the real estate department is back of house. We get everything ready and we manage the revenue stream, a large part of the revenue stream, and fill up our properties. Without our tenants, none of us would be here.

The leasing process starts with an application process and prospective tenants contacting Port staff to find out what is available and if what they are doing would fit into Port property. First you have the application phase of the process. Then it goes to an evaluation phase, lease preparation phase and the lease execution phase.

The initial contact from the prospective tenants usually comes in the form of a telephone call. Staff has an in-depth conversation with the enquiring party to

ensure the uses are compatible with the waterfront plan and the facility. Once that test is met, we instruct them to start the application process. As part of your package, you received our lengthy application as one of the exhibits.

The first application phase is mostly paperwork and fact gathering. Then we go to the evaluation stage. The application is not only evaluated by the real estate staff, but we have a host of regulators that like to pay attention to what we're doing. We have historic preservation. We have building code. We have a lot of partners within the Port staff, like the engineering department and the planning development department that help us get through that process.

Once we have done our major evaluation that also includes looking at businesses' or individual's credit history, we also look at their financial capacity. The terms are presented to the prospective tenant and any negotiating points are reviewed, discussed, and agreed upon. Once we get to that point, we get into the physical presentation of the document. In conjunction with the legal staff, we prepare basic lease information that goes into terms, use of the property, and then we go into the standard boilerplate lease.

If based on Port policy the terms are ten years or greater or the revenue is \$1 million or greater, that lease would come before you as an approving body. In some cases, it would need to go to the Board of Supervisors. Any deviation from the Port policy is also brought before you as an approving body.

Once there is approval by all the recommended and required parties, the lease execution phase begins and we have to get insurance, security deposit, operation plans, and any other requirements of any of our other regulatory bodies. Then the lease is executed and becomes the ownership of one of the property managers, of which we have five property managers and two senior property managers, most of which are in this room. Thank you all very much for being here.

To look at our portfolio and what our property managers manage, this is a snapshot of the different types of lease properties that we have. As part of the approval process, I've listed the ten primary regulatory partners that participate in the Port's approval process. As you can see, many parties like to participate in what we are doing.

In fiscal year 2012-2013, we executed 72 new leases or licenses with an aggregate revenue value of \$3,064,990. That's an annual revenue amount. That represents over five million square feet. We did 42 special events, and that includes events in cooperation with the Giants and with city hall. Also because our Port is such a great place to visit, we get a lot of nonprofits that use our properties to raise money for their efforts, like the Heart Association, Susan G. Komen, and a variety of other nonprofits. As a result of our participation with the America's Cup, we relocated or had to terminate 37 tenants. We manage 557 tenancies.

Many times we hear about the Giants and we hear about the Exploratorium and we hear about the Ferry Building, but I would say 95 percent of our tenants are small businesses. They are city resident owned businesses. They're working class jobs that support many of the businesses in the rest of the city. We have warehouses that store alcohol for our restaurants, fish processors, and many businesses that take the goods that they store on the Port property and deliver them to various businesses around the city.

Everybody likes a piece of pie, so this is a snapshot of the agreements that were executed in 2012-13. As you can see, the majority of them are new agreements that are using our properties that become available.

We are proud of the work that we do. There are projects that come to the Port that don't quite meet the planning and development projects like you have out of Pier 70 or Seawall Lot 330 that are tenant improvement projects. As you can see in the next two slides, there are a lot of projects that span the length of our 7.5 miles.

To give you a better idea of the wide variety of types of properties that we manage, we manage restaurants, we manage office space, and we manage a business called Bay Natives that is down adjacent to Heron's Head Park and the gentleman cultivates and sells plants that are native to San Francisco. He is also a great partner with the Port at Heron's Head Park.

On the top left is 601 Cesar Chavez, the home of the Black Coalition on AIDS. It used to be a restaurant and it's been transformed into a fabulous facility. They're doing great training projects inside of there. We have a picture of the Ramp. We have a picture of Lou's Blues at Fisherman's Wharf that was recently remodeled.

We have a Port project on the right of that which is the Pier 43 promenade at Fisherman's Wharf. We've got a picture of the Roundhouse. The bottom right is the M&R building, which is a warehouse down at Pier 80.

In the last five years, we have survived a recession and we have survived about \$2.5 million worth of Port property that has been taken over by the America's Cup. But with our annual revenue stream, we have continued to increase our revenue year-over-year, except for a slight dip.

We would like to thank you for requesting information on how the process works. It kind of gets hidden in the background, but without a lot of these processes that over the years as an approving body you've set policies in place so that the application process isn't too onerous. If it doesn't have to come to you for approval, we can get a new tenant into a facility in three to four weeks. We're proud of the work we do and we are proud to serve the Port, the commissioners, our tenants, and the city managing this wonderful piece of property. Every day it looks better and better.

Commissioner Murphy - I love that timetable two to three weeks for a tenant to move in. I like that a lot. What I don't understand is how long does the environmental review take for some of these projects and who does that? Is it in-house? Let me rephrase it. If somebody wants to open a restaurant, do you have to do an environmental study on that?

Susan Reynolds - It depends on how extensive the project is. If someone wants to rent office space, say at the Ag Building, the environment review takes an hour maybe. All the way up to if somebody is changing use or if there are hazardous environmental uses, the real estate staff do an assessment of what is the environmental impact for whatever the use is in whatever facility it's going into.

It ranges anywhere from a check off at our weekly pipeline meeting where all the groups come together and check off the things that need to be done to just a check off to, say, for example, Bauer's Intelligent Transportation down at Pier 50 where they are maintaining their bus fleet and filling fuel and changing oil. That requires a full blown operations plan and a larger assessment. It depends on what the use is, where it's going, and what the environmental hazards presented by their activities is.

Monique Moyer - I'd like to elaborate on that a little bit. Susan described it very accurately as it affects her division, but in fact there are outstanding environmental impact reports for almost every piece of property we own. When something goes quickly and easily as a check off as Susan just described, it's because the use is consistent with the outstanding environmental impact report and either staff from the Port's Planning Division or the City Planning has done an analysis to confirm that the new use is going to conform to that.

In cases where there's a change of use, then that can trigger new environmental impact review under CEQA. As Susan explained, we also have environmental practices for the operation side, which is a different portion of our division.

Commissioner Murphy – You mentioned that 90 percent of your leases are small businesses, so I would assume that a lot of these small businesses are going within the envelope of a particular structure. It also sounds as if you're going to renovate or do infrastructure work on a complete pier, that there's definitely environmental review required. What I'm trying to get at here is why should the process of leasing a piece of property at the Port take as long as it does?

We had that problem over at DBI for many, many years and worked so hard to streamline it, make it simple and move the obstacles out of the way. Now we have an over-the-counter permit system over there, which works like a well-oiled machine. I'm wondering if the Port would look at something like that because we don't have a great reputation as things go as far as leasing. Most people that I talk to, hard to deal with, is usually the reply that I get.

I'd like that to improve and not have that sort of stigma of the Port is hard to deal with as far as renting space. I'd like as commissioners to maybe try and come up with some ideas to maybe expedite some of this stuff. Also I don't understand why processing a lease would take 30 to 90 days if it's just a lease for an office space for rent for office, why would it take that long or maybe it doesn't take that long but I need to be enlightened. That's all.

Susan Reynolds - For a standard lease going into an office, if it's office for office it usually takes 30 days. Anything beyond that is because there are layers of regulatory or policy reviews that need to be done. Going back to the slide with the regulatory partners, some of the tenants you may be talking to are doing leasehold work, so they have to go through the permit process. That does add time but that's usually after they get their lease they apply for their permit. It depends on what stage they are having difficulty getting through the process.

For the cookie cutter deals, we're looking at 30 days. To Ruben Solis's credit, we did a lease with one of the production companies that filmed a movie in San Francisco. From start to finish we got the application, the lease produced and signed, keys in hand less than a week so it can be done. We do a lot of those although not that fast. Typically, it takes about two to four weeks for the cookie cutter deals that don't have a change of use or don't need an operations plan or need historic review or they don't need a building permit.

Monique Moyer - To elaborate, I would note a couple of things if you really want to be helpful. If you look at the Port Commission's delegated authorities to me and the staff, it is extremely narrow. If there's a tenant who doesn't want to agree to a paragraph in our 30 page lease, it takes a while to negotiate that and for them to decide whether that's worth it for them to come back to the Port Commission. We don't have the delegated authority to negotiate anything that's not an immaterial change to the standard form lease. That's where one of the hiccups occurs.

Second hiccup occurs because sometimes people put on their application that they want to be as a warehouse. Then as we're clarifying, it turns out they want to be a warehouse and a retail space. That runs afoul of our retail bidding process so we work on that.

A third hiccup occurs because they need a regulatory permit from BCDC. BCDC by statute gets 30 days to review such a thing. They typically come back with a list of items that then takes some period of time to be negotiated.

A fourth hiccup is the city standard indemnification clauses and the city standards for insurance. Oftentimes those are very difficult for smaller tenants to understand and then get the requisite insurance in place. There's any number of places that hiccups do occur because as Susan described, unlike the private sector, there are so many places that have impacts.

If you add to that a tenant might want to make tenant improvements, they're not usually knowledgeable of the requirements for historic preservation, so there's a negotiation around, if you will, moving their vision into something that is acceptable for historic preservation.

Sometimes they want to have persons per square foot that triggers either the requirement for a new bathroom or some other exiting that we don't have in our old warehouses. That has to be built out. There's a negotiation around who will pay for that. Sometimes, as several of the members in this room know, it starts out as photo storage and turns into a museum.

Everything happens. There isn't any one thing I could point to. But if you really are seeking a way to streamline, then maybe what we should look at is what the delegated authorities are for negotiating more broadly around terms in the standard form lease.

Commissioner Murphy – Yes, I'd like to see that. If it's on the lease side, if I'm applying for a lease to the Port and you guys want a pink piece of paper, well, it's up to me to get it and get it quick. It's not your fault that side. So I don't know. I certainly agree we should take a look at that.

Susan Reynolds – I'd be happy too. What would really be helpful to the real estate staff is often folks that eventually get to your ears are folks that are having a problem or they're not getting what they want. Feel free to call me and we can walk through it and investigate what the hurdles are or their perceived hurdles. Sometimes it's just a natural progression that it takes time to do things or maybe they're being asked to do something that they don't really want to do. It would be helpful if you would call me or the leasing manager or any of the property managers and ask. That would be helpful to us. If we can learn what the perception is out on the street if it's different from what we're receiving.

Commissioner Murphy - The perception out on the street is that people out on the street don't know what's available at the Port for rent, first of all. I don't think it's advertised well enough. That's one issue. The perception out on the street is perceptions that I got long before I became a commissioner. It's not something just yesterday or the day before or just I'm hearing because I'm a commissioner. No. I've heard it for many years. I don't necessarily like to hear it. I'm just trying to come up with or you guys on the staff, you guys come up with some ways to improve it.

Susan Reynolds - Over the years, I think we have. We strive. We continually look at our process. We continually make changes. We're here for you to guide us and help us with that process. We have committed to look at our website and how we put our vacancies on our website. It works for us, but it might not work for the general public. We're going to look at that and make some changes to that process.

Commissioner Murphy - We certainly as commissioners don't want to be, as they say, down in the weeds all the time. I know as commissioners we ask a question about something, then we get a pile of paper this high that will take us a week to read it and we don't have that kind of time. That's why I'm asking the questions today. Thank you anyway, Susan.

Commissioner Adams - First of all, Susan, I like your comments. Commissioner Murphy is a real estate expert. I'm not but I do have a few things I'd like to add. I noticed that the vacancy rate is 8 percent compared to 9.5 citywide. It seems like we're doing pretty good. Then when I look at the revenues from 2009 to 2013, to me one and one is two. Two and two is four. So I look at that approach to it. I understand Commissioner Murphy and maybe he should work a little bit closer with you because if there's some issues, I haven't heard anything on the streets saying that it's difficult process to come down to the Port. I'm pretty much out in the streets. That's good because one commissioner may hear one thing and another commissioner might hear another. That's why we have five commissioners so we all have different points of view, which I think makes it good. If there was something that you thought that we could improve on, what would that be?

Susan Reynolds - Things that we have control over. We really have made an effort all the way from Monique down to the staff that are actually doing it. What our big hurdle is regulatory issues, city ordinance issues. Those are probably the biggest stumbling blocks. Unfortunately, sometimes a good intention becomes a hurdle. For example, the bidding process, everything needs to be publicly bid. You all know what that process is. It's a long process. Sometimes it needs to be a long process to ensure that nobody or nothing is getting left out because when you do things quickly, sometimes you make mistakes.

I think that what we can do is to continually look at our process and continue to improve it as we find things. We've been doing the same thing for a long time. It's comfortable and it's hard to change. Everybody has trouble with change. So to listen to each other and for you to work with us and for us to work with you in improving whatever, what we hear, what's difficult to make sure that we get the opportunities that are on the Port out there for everybody to participate in.

Commissioner Adams - Thank you. Like I said, I'd like to see you work closely with Commissioner Murphy. He might have some insider, some things that I wouldn't have or some things that he may think because that's what he does. He comes from that kind of a background.

Susan Reynolds - I have a table and a bunch of chairs in my office that you're welcome to come and use any time.

Jeff Sears - Over 25 years ago, my wife Elena and I started our businesses down at Fisherman's Wharf. Since then, the real estate managers have worked with us along the way, being very accommodating and instrumental in making the Port's resources accessible to our businesses.

The first Port member that really opened the door for us early in our careers was James Herman. He had the vision to know that the waterfront was in transition and with it would come new types of businesses like ours. I wanted to take this opportunity to thank the Port and acknowledge the significance of its role in the evolution and growth of our business that would not have been achieved without the Port's support.

In most recent years, Monico, Rip, and Jay have been extremely supportive and helpful during those adjustment periods, providing us with storage space near our operations. Without the assistance of the Port and its property managers, it's clear that our business would have not reached the success it has today.

Because of the Port's consistent support, our company has grown to over 100 employees on the waterfront earning livable San Francisco wages. As we've continued expanding over the years, the percentage rent we have paid has also increased. We are sure it has been well received by the Port as well.

It has always been a pleasure working with the Port and we look forward to continuing this prosperous relationship into the future.

Scott Klopff - I'm the general manager of Zaccor Companies. We're a relatively new tenant to the Port. We relocated from the Port of Oakland. We're a small business. The Port real estate staff was very accommodating and they really assisted us in our move in. We went through the environmental procedures and all the regulatory compliance and the environmental staff was a big help.

We understand that they have a tough job. There are a lot of requirements, a lot of regulatory people looking down and checking their work. It's a tough business that we have to comply and they have to make sure that we comply. It was kind of stringent, but we understand that's a requirement and they made it very accommodating. I'd like to thank the Port and your staff for their efforts.

Commissioner Brandon - Thank you. Welcome to the Port of San Francisco.

Paul Gryfakis with Build Group - We're a general contractor building a project across the street from Crane Cove Park. We moved in about six months ago. The process was pretty easy. I heard it was difficult to get a lease, but it really wasn't. It took about 30 days and got some good land. They helped us build our project. We had a really good, nice, easy time.

Commissioner Katz - Just want to thank you for your presentation. It's sometimes a little bit like secret sauce. We don't know exactly what comes in when we get all the presentations and we see the 557 leases that we have. They run the gamut from the Giants Stadium to mom and pop shops. I thank you and your staff for managing what is quite a portfolio. I think in the private sector I know we probably have significantly greater number of people managing all of that. Thank you for your presentation and clarifying a bit more of the whole

process. I know I speak for my colleagues and certainly it's been stated previously that to the extent that we can be helpful in any way, we certainly want to put ourselves out there and let you know that we'd like to help.

Commissioner Brandon - Thank you, Susan and all of your staff for all that you do for our wonderful waterfront.

At 5:35 p.m. the Commission took a break and reconvened back in open session at 5:50 p.m.

13. PLANNING AND DEVELOPMENT

- A. Informational presentation by (1) San Francisco Waterfront Partners III, LLC, and (2) TMG Pier 38 Partners, LLC, a joint venture partnership consisting of TMG Partners and Premier Structures, the respondents to the Request for Proposals for the Pier 38 Bulkhead Rehabilitation Project, located at Delancey Street and The Embarcadero.

John Doll, Planning and Development - This is the Pier 38 second presentation. I just want to remind you that the Port issued a request for proposals for Pier 38 late last year. The respondents for this RFP were asked to submit a short-term implementation strategy of the Pier 38 bulkhead building and demonstrate its qualifications to undertake developing a long term project for the remaining part of the Pier.

As you know, we received two responses to the RFP. Both are highly qualified. San Francisco Waterfront Partners and TMG Partners responded to the RFP to rehabilitate and re-tenant the Pier 38 bulkheads structure.

On June 11, 2013, both developers presented their qualifications and plans for the phase one bulkhead rehabilitation. To help the commission and staff to further assess their proposals, Port staff has requested each of the development teams to further describe their vision for phase one rehabilitation and re-tenanting.

Accordingly, we have asked each developer team to address specific questions in their presentations. For phase one, we have asked them to address project timing, incorporation of local hire and local business enterprises into their project, and the price and term of their phase one project.

In addition, the development teams have been asked to describe their overall vision of the redevelopment of the entire pier or phase two with regard specifically to development phasing and regulatory feasibility.

As part of that we asked how soon after completion of phase one would phase two begin. We asked them how phase two might affect their project's economics. finally, we asked them to demonstrate how phase one might enhance phase two.

Last time San Francisco Waterfront Partners was first and TMG was second. Today, TMG will be first with Michael Covarrubias. They're allotted approximately 20 minutes each for their presentation.

We hope to return to the Port Commission in September with a staff recommendation of the best qualified developer for the Pier 38 project.

Michael Covarrubias, chairman and CEO of TMG partners - I'm here today representing our group. What I want to do in the brief introduction is just give you a quick overview. Then we're going to try to answer all those questions in the time allotted.

You have a description of our team members. All of them have had extensive experience dealing with the Port and doing projects on the Port, our partners at Premier Structures you know well as with our architects, our structural guys, and construction and attorneys.

The purpose of this conversation is to give you an overview of those two possibilities, doing a phase one and then doing a phase two on the bulkhead and the pier. They are tied together physically and we think they make a lot of sense together. I want to give you just a macro overview of what we think the TMG team provides and then Matt Field and Amy Neches will walk you through the specific questions.

It was our intent to make sure that we met your vision, both from a public standpoint of use and from a financial return on your investment. We wanted to make sure that the experience provided combines all the relationships that exist today in the South Beach community, other companies, the public, the tourism, and all of that.

TMG is now going to be celebrating its 30th anniversary next year. We have done over 20 separate developments in the city of San Francisco alone during those 30 years. We've done over \$3 billion worth of transactions. As we mentioned to you last time, we as an entity have not built specifically on the Port, but our team and our experience in the city we think makes us highly qualified to do that.

Matt Field - It's great to be here. We do see this as a unique opportunity to build on the transformation of what's happened along the waterfront. As a kid who grew up knowing the Embarcadero as a freeway, to see the Embarcadero now known as the waterfront and what's happened, we really see this project as a culmination of a lot of things coming together in this part of the waterfront.

I'll start with the phase one implementation of the short-term strategy. We looked at four main tenets in approaching this. First is we're looking to not trigger a seismic upgrade. It's a very significant undertaking if we breach the occupancy thresholds here. So it was one of the things that drove us in terms of selecting

uses that we can put into the structure, particularly public assembly uses like restaurants trigger higher occupancy, so we were driving towards a threshold.

There's 634 occupants potentially allowed in here based on the prior use. We are 630, so I think we're about as close as we're comfortable getting without triggering. We wanted to have active public uses. We looked at financial feasibility as a big tenet of what we were doing, knowing that we were trying to not invest huge amounts of money to do something very quickly. You'll see we're looking for the fastest activation because we saw that as one of the primary requests in the RFP. Initially it was structured to be fairly short term and quick. That's how we approached this.

In terms of trust related uses, we've got retail, dining, and food trucks that we're proposing to do on the front of the bulkhead building. If you haven't been to StrEat Food, which is over on 11th and Division, I highly recommend you go see what's happening over there. We plan on tearing off of that the people, the activation. It really does capture everything that's happening in San Francisco right now with creativity and very light touch.

We see a real opportunity here coming back out onto the north apron, redoing the north apron, fronting onto the Brannan Street Park, and getting public access back into the building.

At the same time, we look at the shell of the building. Ironically, it's sort of what we would deconstruct buildings to do in South Market right now. You can look at it as being in disrepair. We look at it as an opportunity. We're doing a ton of tech office all over the South of Market and all over the city and frankly the Bay Area. This is exactly the kind of space that we would start with, try to end with almost. We think light touch implementation here.

The ground floor ends up being a mix of uses. Public access onto the north apron. Restaurant on the front and tech office in the bowel to the bulkhead. The second floor would encompass more of that same tech office space. Those big, clear spans, the wood beams, it's exactly what we're doing.

We're redoing the Hamm's Building, the Old Brewery South of Market. I think we alluded to the last time we were here we had a celebrity chef coming in. We recently signed a lease with Thomas McNaughton whose Central Kitchen and Flour + Water to be in the building. We see those sorts of opportunities here on a short-term basis.

They're downscaling their content to come into our building. We did something special with them to try to not put a ton of money in and do something quicker serve. We see the same opportunities in this structure.

We're really gearing this to fast implementation. We saw the request to turn the space around and get it active again as quickly as possible. We think the negotiations and approvals based on what we're doing can be accomplished in

about nine months at the outside, maybe five months at the inside. We think we've got about seven months of design and permitting to go through. Because we're not doing major infrastructure improvements, we can get this going in about four months. That gets us in at about 18 months from the time we start this process. We think that's about as fast as we can go, but really an achievable schedule to get the bulkhead back in service.

Our lease term we're proposing is 25 years. We are still making fairly significant improvements here. We're spending about \$6 million. We're proposing rent to the Port of exactly \$25,000 a month. It's \$300,000 a year. It does escalate five percent every five years. We are looking for credits against the rent for the qualifying improvements of up to 50 percent of the rent.

The Port will receive a participation if we were to sell this to a non-affiliated entity, if we transfer it to another entity which we own. We wouldn't consider transfer, but if we do sell it, the Port does participate in our profit from selling it. It's a short term, quick turnaround of the bulkhead building to get it active and we think compelling economics given the investment into the space.

The full rehab is a major undertaking. The pier is in pretty serious disrepair. We see this as a great, great opportunity to return the project to being really a public asset. This is a great pier. It lacks aprons now that are accessible, but being able to get it back out on this part of the waterfront is going to be really spectacular.

It will require a full seismic upgrade, as you probably know, the shed being a lesser undertaking than the pier itself, being stabilized. It will be a complete historic renovation, complying with the Secretary of the Interior Standards. As we alluded to last time we were here, we've done a number of these projects, complying with the Secretary of Standards, including One Market Street, directly across from you here.

We see a great opportunity in building on the fabric that's already there. Those steel beams. The building has great bones and we see a fantastic opportunity to build on what's there. Of course, building on the public trust and maritime uses, that can be supported by office development.

So how we see that going is we have, again, retail and dining in the front. Our scene here is to make improvements to the front in our phase one that we can mostly reuse in phase two and not disrupt. So our temporary uses in the front, when we start construction in the rear, we don't have long-term leases that might be impacted by the heavy construction that we see occurring in the rear. We see the access and heavy construction back there are a real challenge that we'd like to avoid disrupting if we can.

Again, maritime on the dock. The floating dock on the north and a new dock on the south that would be implemented as part of this program. Guest docking and berthing, water taxis, boating facilities. We see this part of the waterfront is

under radical transformation. Providing additional access we think will be critical for not only our project but for other projects that are occurring along this part of the waterfront.

Restoring the apron. Here if you walk out in this building and you look out and you see what's possible here, we see a real opportunity to provide an apron that wraps all the way around the building - two pass-throughs. One at the front of the building and a second pass-through about two-thirds of the way down the pier to provide public access in a number of different places.

We think this will be really a unique asset. This is a very long pier when you compare it to other piers, so there's opportunity here that we think doesn't exist in a number of other projects that are not quite under the same scale.

We're providing office that would stretch for the latter three-quarters of the pier. We see that happening on the first and second floor. We're looking at building mezzanines in. The first floor is a mixed use component - public access, the docks, the retail at the front, and then office at the rear of the project.

We think this a really unique approach to putting the second floor in. If you've been in the building, it has a very tall clear story in the middle of the building, so rather than pulling the mezzanines out to the glass line we're hoping to hold them into the middle of the building and then build atriums between those mezzanines so that we take advantage of the tallest part and we don't push out against the glass line. We're going to enhance the transparency of the exterior of the building by not putting a floor right up against the glass.

This is about what the building looks like today. Our vision for transformation does something along the lines of this, activating that north apron again and picking up on the existing facade and improvements, which if they're polished, the basic improvements are great.

Looking at the pier, this has more dock doors than other piers when you look at it. In many cases, there wasn't a lot of natural light that was possible to get into some of these spaces. Here we think the transformation can be using the existing openings and filling those with glass and allowing access back out to the north apron and getting the dock improved. This is a view looking back, obviously, from the new Brannan Street Wharf, which we think this pairs really nice with.

Here's that interior clear story I was talking about and the iron work. We think this is one of the great features. You can see those rollup doors there, so you can imagine transforming this to something that looks more like that on the inside, picking up off those existing improvements and being able to get light back into the middle of this. We think that there's a great opportunity and great demand for this kind of space in the city.

We've been very successful with tenants looking for this type of creative space, including Macy's, Riverbed, Zango. We've done any number of large transactions with tenants that would fit neatly into this space.

The process obviously has a number of steps. Amy Neches, our partner that will manage the process part of this, will talk to that. We're really excited about this opportunity.

Amy Neches - In this part of the presentation, what we'll try to do is address some of the specific questions that staff asked us to talk about as part of this presentation. In terms of regulatory approvals, as you well know, there's a lot of complexity when you do anything on the waterfront, and especially when you do anything and it's a major project such as this. We've designed our program of uses as Matt has very eloquently gone through, to make sure that it is something that is feasibly approvable within the current framework of the regulation of the waterfront.

The local approvals require the Port and the Board of Supervisors pursuant to a CEQA clearance process for the short term. That might not well be a categorical exemption. For the phase two project, we're pretty sure that would be a full EIR.

There is an existing BCDC permit that is held by both the Port and the last lease holder for the pier that would need to be amended or possibly for the long-term project a new permit would be needed. We believe that our land use plan, the types of uses, and particularly the maximum feasible public access is something that BCDC will embrace and that this is something that can be permitted with a combination of uses.

Most importantly, we've been very conscious of making sure that we are proposing a mix of uses of the right balance that will be consistent with the public trust. The historic rehabilitation of the building to Secretary Standards is itself a trust use combined with a balance of restaurant and retail as well as the new apron and the Bayside history walk we believe will allow the appropriate balance with the office space that is needed to make this project financially feasible. We believe that we do have a regulatory strategy that will get us through any reasonable amount of time.

Matt walked through some of the economics of phase one. Phase two we have not yet submitted a formal proposal. That has not been requested at this time, but obviously it's a major project to do the entire pier. The development cost would be in excess of \$100 million. We would be requesting the full 66 year lease that is within the trust allowance because that would be required to amortize a very substantial investment, particularly for the full seismic upgrade and pier structural work that will be required.

We will finance this through a combination of private equity, debt, and federal and state historic tax credits. TMG has a lot of experience and we believe that we can secure those credits and help make this project work.

The project would generate a good deal of revenue over its life as well as a good deal of expenses upfront. We expect that we would be able to pay a very substantial amount of rent to the Port and would be willing to structure various forms of upside participation. As is typical for these major projects, however, there would be a need to negotiate an offset of rent credits, qualifying rent credits, for the structural work that would result in this new project going forward.

We've been asked to address project phasing issues. We'd like to be as frank as we can with you about this. We have submitted this as a two phase project. The bulkhead rehabilitation, which as Matt said we think we can have in place in 12 to 18 months, followed by the phase two full rehabilitation of the pier. We believe the appropriate time, from a legal point of view, to start the entitlement process for that phase two project is after phase one is approved, while it was in construction. So let's say spring of 2014. Realistically, it's about two, maybe a little bit more than a year process to get through the entitlements and all the regulatory approvals for phase two. We'd be hoping to finish, get phase one in construction, get it open, while we finish the entitlements and permitting and design for phase two.

The major benefit of doing that phasing approach is because, as Matt said, we want to help the Port meet the very reasonable goal of trying to get the bulkhead back into service, reactivated, full of life, full of public uses, and returning rent to the Port as quickly as possible.

There is a realistic tradeoff on the economics that it is no doubt more efficient to do this as a single project. In part there is a certain loss in the amount in some of the improvements that money that gets put into hard costs cannot be salvaged because of the need to do a full seismic upgrade. There's also the additional costs of entitlements and development planning and soft costs and permitting that essentially and, of course, the additional time to get to phase two.

If the Port chose to do this as a single large project, you would lose the benefit of very quick activation, but you would gain the benefit of a more financially feasible project which would then return higher rent and participation to the Port. Those are the tradeoffs that need to be thought about as you go forward.

Finally, we've been asked to address our goals for local business and workforce programs. I want to assure you, as we did last time that we are fully committed to this. We understand that this is a public project. Our partners at Premier Structures have worked with you on the AC34 plan. TMG right now is doing a fantastic job meeting the redevelopment agencies workforce goals and the city's workforce goals at a large project at Folsom and Third Street.

We are committed to this. We will work with you and with the HRC on an agreement for both consultants and subcontractors as well as for workforce participation through a local hire program in San Francisco. We are all San Francisco based firms. Premier Structures, our JV partner, is in fact a registered

LBE. We are also excited that particularly the first phase of the project, which will be about tech businesses and small businesses is something that is another form of local participation. We absolutely embrace the importance of these programs.

We believe that we have a great team. We believe we have the right vision. We have a lot of passion for this project. We know that these are difficult projects, but we think it's very exciting and it's something we'd really like to do. We would look forward to working with you. We are happy to answer any questions that you have.

John Doll - Now we have San Francisco Waterfront Partners led by Simon Snellgrove to make his presentation.

Simon Snellgrove, San Francisco Waterfront Partners - I'm going to make the presentation today on behalf of my partner Alicia Albin. Before I launch into our presentation, I want to thank John Doll and all of his colleagues at the Port for assembling the RFP and for doing a very good job on what is a difficult concept. I also want to thank the entire team, our team and especially our consultants, who have worked very hard and given a lot of hard work to thoughtful and brainstorming way to best accomplish the Port's goals.

Our approach today is, thank you Michael, for breaking the ground on that, a single project broken into two phases. We can't emphasize enough that we think this is a fabulous project that deserves to be done in two phases. We understand the Port's desire for a speedy reactivation. We believe our approach will create immediate income for the Port, a seamless transition to the second phase.

We are proposing to start with a relatively modest scale, slightly tweaked from the last one that you saw, leading onto a very robust project. We think that this approach is going to be the best way to accomplish your goals.

First of all, I'd like to start with the first phase. This shows that we, at all times, will stay in compliance and consistency with the Secretary of the Interior Standards.

First of all, the big idea we have and have worked on hard with our code consultants, our architects, engineers, and our land use attorneys is to start by installing a seismic joint in the first phase of the project. This will enable us to upgrade the building entirely to current seismic standards and to occupy the building with some changes of use to accomplish what we think would be an excellent solution to the state lands trust and the Port's goals for public access. To immediately reactivate the public access. To reactivate the maritime use with small craft launches, water taxi landings and kayak landings, and berthing on a transitional basis.

Coming around to the south side of the apron, our intent will be to remove the office space in the bulkhead building, thereby allowing public access onto the apron and up around to finally reconnect the neighborhood with the water.

Visitor serving retail instead of office. We will address how we accomplish that with a change of use. Finally a history walk connecting the north and the south sides of the building.

We've also included 55 valet car park spaces, but we want to impress upon the Port we're happy to work with you either way with those numbers.

On the upper floor, by seismically upgrading the building, we're able to permanently occupy the bulkhead building with office. We will bridge over the railroad passage that has been created to provide public access to the water. If the Port so pleases, we would even extend to take over the Pier 40 lease part of the bulkhead building so that we can upgrade the entire building in one piece.

As far as re-tenanting, we've been asked to address that. Below the screen where the seismic joint is, we'd be able to permanently install restaurants there that would not have to move. Instead of food trucks, we've taken what we think is a more trust compliant BCDC happy approach, which is to do pop-up restaurants in the shed space. Pop-up restaurants, mostly the investment is in the furniture, fixtures, and equipment (FF&E), which can be more easily removed and replaced when the shed is upgraded to seismic standards in the second phase.

A view of the apron is here where we've widened the apron to provide for a generous BCDC public access and still have the pop-up restaurants pulling out with images like this. The one on the top is what you've probably all seen at Pier 29 for the America's Cup. It's a great pop-up restaurant. Pulling out onto the verge, onto the apron would be beer gardens and casual, affordable, approachable sort of restaurants that are in keeping with this neighborhood.

As far as the southern apron is concerned, a big idea is removing the office and extending the public walkway through. The bulkhead we are able to create two permanent cafes that, again, they won't have to be removed for the second phase. We have addressed the issue of occupancy change from a B to an A by upgrading the bulkhead building to current standards.

We will address a seismic trigger on the bulkhead portion from an environmental -- all of this work, we believe, can be done under a categorical exemption, but lest the MEA, now EP concern that the change of use might trigger an EIR, this can be addressed by changing the configuration of these cafes so that no more than 49 people are in occupancy.

The vision there is shown here where the bulkhead building's upgraded. We'd have a bridge connecting the office at the second floor, similar for what we did for Bloomberg in Pier 3 above the Plant Cafe. So we get contiguous office

occupancy and the walkway through to the water bordered similarly what we did in Pier 3 with cafes on either side.

Alicia has done an amazing job of sourcing incredible tenants. She's got a lot of ideas, had a lot of people come to see her about it. She's submitted some letters. We've got some very excited tenants who would like to come into this, and all the more so because you're not going to have to move them out for phase two.

As far as our schedule, we differ a little bit, but not much from Michael's approach. This is the schedule for phase one. We believe we can do it in 15 months all this work, which it involves bringing everything up to code and getting the permits through categorical exemption can be achieved.

We certainly have a lot of experience in doing leases with the Port. We have done a lease with Grace and Jonathan. We've done so many leases with them. We could probably write it ourselves and get it signed in a week and over to Susan Reynolds.

A quick start and we are always optimistic. We will stay within the categorical exemption and we will achieve this project in 15 months given the chance.

Here's the economics. We've got something a little different than our first submittal. We're proposing ten years because we don't believe it's going to take more than ten years for the entitlements for phase two. We are looking at phase one as just the introduction to phase two.

We would pay \$120,000 per year per annum to the Port starting on day one during the construction. We would pay a minimum base rent of \$120,000 once it's occupied versus a 15 percent of the gross receipts of the net receipts on rent. Just as an aside, on Piers 1½, 3, and 5, we started paying the Port percentage rent or at least paying towards amortization within six quarters of opening that pier and we are continuing to pay that.

The adjustments to base rent would be every five years with CPI. We would not amortize any of the infrastructure costs in phase one. We're not asking for a long-term lease to do that. We are going to defer all of the infrastructure costs until phase two so the Port will get its \$120,000 no ifs, ands, and buts during that period. We'll provide the funding. We will provide the maintenance. We will pay for the operations. The net present value of that over ten years is only a million two ninety and the current value is \$940,000.

We have addressed more in phase two in our presentation, but here's our concept for re-tenanting. Phase two would enable us to completely wrap the pier in public access. Not unlike TMG's proposal, we would cross the pier with public access.

Our difference here is we're putting a very large space on the end of the pier, if you like, the sort of retail, public assembly occupancy. This would be a space

that was given to special events not unlike the America's Cup. The Port could use it for events. Everybody could rent it for events. We would enlarge it, put a very large apron out on the eastern side unlike what has been done at the end of Pier 27. We are very excited about this concept.

We would extend the transient berthing on the south side. We've done a little sketch of crisscrossing the shed. Those of you who have had to walk around Pier 1 rather than go in the back door might appreciate the length of this pier. These transitional space would enable the public to see up into the office space to appreciate the historic rehabilitation and would occur at three points across the shed.

The economic driver of this project is the 74,000 square feet of office. We've got a very interesting leasing concept about hub space and the usual tech office space with both venture capital and developers. We've had a lot of conversations with one of the people who ran the previous hub space in this building.

The second floor would be office. Not all hub space, but certainly a part of it similar to the concept that TMG came up with, very large skylights. We will aim for Gold LEED standards. We have about a 900 foot long roof here. About 90,000 feet to play with for solar panels, and don't forget we did the first solar panel on the waterfront. We've done three of them. They're all working. We went through the nightmare of trying to get those approved. We can handle that and I'll live to rue the day.

As far as schedules are concerned, there's phase one. Alicia kept telling me this was too complicated, and I agree with her but the dotted line that shows where we finish up, that 15 months can well be used for getting the entitlements.

We believe that as we have on other piers, we've got a mitigated negative declaration. There's nothing that we're doing here that is going to significantly change the state of affairs. Anybody can say you're going to have to do an EIR. Of course that later can be written and in that case a full EIR would take longest than this. We've said that a mitigated neg dec could get us there, but if somebody wants an EIR done, members of the public, then it could extend this. We're probably more in line with what TMG's saying, then. You'd have to add another ten months, a year, for the whole EIR process.

If we're successful with the mitigated neg dec, we believe as we finish construction on phase one, we can start construction on phase two and get done by November 2016, so a seamless and non-disruptive phasing.

The phase two lease terms. I'm giving it all away. \$120,000 for continuous construction period for both phase one and two. When we get to occupancy of phase two, a million, \$1.2 million minimum rent versus adjusted every five years versus 15 percent of our Port deal. Monique knows it well. It's 15 percent of the net receipts. That means all of the rent excluding the operating costs.

Our assessment is that the infrastructure costs will be \$26 million, including what we're doing in phase one. We're going to try to burn it off in 20 years. We would also pay the Port 15 percent of any transfer or sale. We would propose to figure out ongoing transit impact fees because we think along the Embarcadero that's the right thing to do. We'd have a parking surplus fee. We'd have the Port have a priority use of the 5500 square feet at the end of the pier and for the public event space.

In all, the gross rents paid to the Port would be \$240 million over the 66 years with a net present value of \$31 million. Roughly that translates to about \$165 a square foot, which is the high end of what's being paid, I think. Michael buys and sells more. It's a high thing plus you will get 15 percent of the sales transfer, a very generous offer. Hopefully it will knock him out of it.

Regulatory agencies, Alicia wrote a very good thing about this. She said you have to have a strong stomach and a good lawyer to go through this process. We've done it, we've done it, and we've done it. We have very good lawyers and she has a very strong stomach. She says that which does not kill us makes us stronger, so we maintain a sense of humor.

LBE, we hit it out of the ballpark all the time. 22 percent against the 15 percent target on the piers. 24 percent on 8 Washington against the 15 percent target. We have a 15 percent target. We have very strong targets and we mean to accomplish them. We believe in it.

Meeting and exceeding the Port's objectives. We believe that everything here meets and exceeds the Port's expectations and objectives and shows Commissioner Brandon the money, which is always one of her concerns.

Why SFWP? Why us? Our team has been and will continue to be dedicated to achieving the delicate balance between that essential passion for creativity and the long-term legacy of economic sustainable. We understand and respect the Port's mission and its challenges. We understand that we are not and never will be the owner of this asset, but simply aspire to be the Port's partner in creating and caretaking for it for the next generations.

We share a long-term vision to establish a canvas upon which many future generations are able to create their own uses and reuses in ebb and flow of cultural and economic trends. We have the team to execute the project. We have the financial capacity. We have the waterfront experience. We have the vision. We have the commitment. This project embodies our mission and all of our core values and we never give up.

Commissioner Katz - I would like to thank both teams. We have an embarrassment of riches here, no pun intended. We are dealing with two stellar teams and we know both teams quite well. Before starting phase two, is it the intention that the space up in the bulkhead would be inhabited or tenanted while

the phase two construction takes place or would there be a time where it would be empty during that phase?

Simon Snellgrove - By redoing the seismic on the bulkhead, we would be able to maintain the tenants throughout the construction.

Commissioner Katz - And that's doing the seismic in phase one?

Simon Snellgrove – Yes that would enable us to do it. You may not have noticed. We would not be putting office in the second floor of the shed in phase one because that's going to all be removed. We think it doesn't make sense to put the offices in the second floor of the shed and then take them back out a year later.

Michael Covarrubias - The biggest difference I saw other than some of the new things that Simon did to take our ideas was that our project tried to address your request, which was if you only get phase one, can you do it. Then if you get phase two, how would you do it. I think the difference if I heard it correctly, but to do the seismic upgrade for just the bulkhead I can't imagine is economically feasible, which is why I think his are more tied together. We're prepared to do a phase one if that's what you say you're prepared to transact, as we proposed it. That's why we have the uses that we have, which is some of them are more interim or potentially flexible. As Matt said in the last presentation we had, when we did the rehab across the street at One Market, having the One Market Street restaurant open during construction was a living nightmare because they were operating a full-time class A restaurant while we were doing seismic upgrades. That's just something you don't want to repeat.

We drew it up in a way that we could do the phase one first. Have the tenants with the food truck concept be flexible. Then come back if you decided in three years to award the second part. Obviously, as Simon said, we both would rather do it all at once, but we tried to address it in a way that you could choose one versus the other. Hopefully that's not an inaccurate statement.

Commissioner Murphy – I want to thank you both for a really great presentation. You both sound like very experienced participants. I think it's a great project.

Commissioner Adams - I want to piggyback off on my fellow commissioners' comments. This is just great. Both have different visions. Both have creative thinking. Both are out of the box. I am impressed with both. This is a great project. I don't think the Port could be in a better position to have two excellent candidates. I really don't know what to say. It's just so evenly matched to me.

Commissioner Katz - Is there percentage rent considered in the TMG proposal?

Matt Field - In phase two, we do a percentage rent. We think in phase one, we're paying it in base rent.

Commissioner Brandon – Simon, if I'm reading the numbers right, it's going to cost about less than \$40 million to do phase one and two or was it \$26 million just for the substructure or infrastructure?

Simon Snellgrove - The \$26 million is just the infrastructure. Budget costs 118 million roughly. We're in the same ballpark plus tax credits so it will be around \$100 million.

Commissioner Brandon - Can you both just give me a cursory review of what your maritime components will be.

Simon Snellgrove - I beat Mike because I put this little self-launch crane in. He missed my little self-launch 4000 pound crane. There's one over in the marina in Sausalito where the public can go hook on their kayak and drop it there.

Amy Neches - Obviously maritime uses are important, both because it just takes advantage of this wonderful asset on the water and because it's so important for trust consistency and BCDC approval. Our proposals are very similar. In both cases the teams are proposing to rehabilitate the existing floating dock that's on the north. We are also proposing during the long-term phase to build a new guest dock along the south. The guest dock along the south would operate almost as part of the South Beach Harbor complex and could be for both permanent docking and for larger craft that are guest docking.

The floating dock on the north is more of a light duty facility. It would be good for small craft launching, a human craft like kayak launching, as well as for an ongoing taxi service, which would serve both this project, of course the Brannan Street Wharf. In addition, we would have some maritime facilities inside the building to serve the boaters who are coming and going. I was involved for many years in the operation of South Beach Harbor, which I'm happy to hear the Port will soon be operating.

When you have any kind of berthing use, you need restrooms and showers and laundries and lockers and work rooms. A lot of maritime facilities are involved in any kind of working small boat situation so we would have that as well. This is connected to but separate from just the public access, which is the apron that would wrap all the way around the pier, the new apron supported by the new seismic upgrades. The expansion and improvement of the north and south apron area near the Embarcadero.

Simon Snellgrove - We have stuck to transient berthing. There's a difference between transient berthing, having to do with BCDC's marina becomes filling the bay. Transient berthing if you don't stay for more than two weeks is okay so it's similar to what Amy said. We've got transient berthing.

We have an elaborate plan which I made in the first presentation to extend the seawall for the South Beach Harbor to create a harbor for large visiting vessels. We did not include it in here. I have alluded to it and said it will be the subject of

working with the Port's harbor master at the South Beach Harbor and exploring that with BCDC because we think it's in everybody's best interest to get on with mitigated neg dec. If we start putting seawalls in that you need for proper berthing -- Moffatt and Nichol, Rich Dornhelm who's done all of the work and worked down there has done an extensive study for us, but Alicia made me take it out.

Commissioner Brandon - I want to thank both teams for your presentation and thank you for coming back again. We really appreciate it. This has really been greater detail and a wonderful presentation. We really appreciate you coming. It's going to be a really hard decision. Thank you so much.

14. NEW BUSINESS

Commissioner Brandon - I would like to ask staff to give the Commission, sometime in the near future, a status on the complaints for Darling Delaware and what's going on there, especially their complaint about the hotline that's supposed to be in effect.

Monique Moyer - Certainly.

15. ADJOURNMENT

ACTION: Commissioner Katz moved approval to adjourn the meeting in memory of Capt. Tom Meredith. Commissioner Adams seconded the motion. All of the Commissioners were in favor.

Port Commission Vice President Kimberly Brandon adjourned the meeting at 6:45 p.m.

